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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

230118-0016

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Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Pacific Cod Trawl Cooperative Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 122 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). Amendment 122 would establish the Pacific Cod Trawl Cooperative Program (PCTC Program or Program) to allocate Pacific cod harvest quota to qualifying groundfish License Limitation Program (LLP) license holders and qualifying processors. The PCTC Program would be a limited access privilege program (LAPP) for the harvest of Pacific cod in the BSAI trawl catcher vessel (CV) sector. This proposed action is necessary to increase the value of the fishery, minimize bycatch to the extent practicable, provide for the sustained participation of fishery-dependent communities, ensure the sustainability and viability of the resource, and promote safety and stability in the harvesting and processing sectors. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the BSAI FMP, and other applicable law.

DATES: Submit comments on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2022-0072, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0072 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to the Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and would generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender would be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted via mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Stephanie Warpinski; or online at www.reginfo.gov/public/do/PRAMain. Find the particular information collections online by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

Electronic copies of the Environmental Assessment, the Regulatory Impact Review, and the Social Impact Analysis (collectively referred to as the “Analysis”), and the draft Finding of No Significant Impact prepared for this proposed rule may be obtained from <https://www.regulations.gov> or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, 907-586-7228 or stephanie.warpinski@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone (Federal waters) of the BSAI under Federal regulations implementing the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared the BSAI FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the BSAI FMP appear at 50 CFR parts 600 and 679.

A notice of availability (NOA) for Amendment 122 was published in the ***Federal Register*** on December 30, 2022 (87 FR 80519, December 30, 2022), with comments invited through February 28, 2023. All relevant written comments received by the end of the comment period (See **DATES**), whether specifically directed to the NOA or this proposed rule, will be considered by NMFS in the approval/disapproval decision for Amendment 122. Commenters do not need to submit the same comments on both the NOA and this proposed rule. Comments submitted on this proposed rule by the end of the comment period (See **DATES**) will be considered by NMFS in our decision to implement measures recommended by the Council and will be addressed in the response to comments in the final rule.

I. Background of Pacific cod Management in the BSAI

A. History of Pacific cod Management in BSAI

Pacific cod (*Gadus macrocephalus*) is one of the most abundant and valuable groundfish species harvested in the BSAI. Vessels harvest Pacific cod using trawl and non-trawl gear. Non-trawl gear includes hook-and-line, jig, and pot gear. Vessels harvesting BSAI Pacific cod operate as catcher vessels (CVs) that harvest and deliver the fish for processing or as catcher/processors (C/Ps) that harvest and process the catch on board.

The BSAI FMP and implementing regulations require that, after consultation with the Council, NMFS specify an overfishing level (OFL), an acceptable biological catch (ABC), and a total allowable catch (TAC) for each target species or species group of groundfish, including Pacific cod, on an annual basis. The OFL is the level above which overfishing is occurring for a species or species group. The ABC is the level of a species' annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty. Under the BSAI FMP, the ABC is set below the OFL. The TAC is the annual catch target for a species or species group, derived from the ABC by considering social and economic factors and management uncertainty, and in the case of BSAI Pacific cod, after considering any harvest allocations for guideline harvest level (GHL) fisheries managed by the State of Alaska (State) and occurring only within state waters. Under the BSAI FMP, the TAC must be set lower than or equal to the ABC.

The OFLs, ABCs, and TACs for BSAI groundfish are specified through the annual harvest specification process. A detailed description of the annual harvest specification process is provided in the final 2022 and 2023 harvest specifications for groundfish of the BSAI (87 FR 11626, March 2, 2022). The annual harvest specification process for BSAI Pacific cod is briefly summarized here. Specific examples of Pacific cod OFLs, ABCs, TACs, and other apportionments of Pacific cod used in this preamble are based on the 2022 specifications from the final 2022 and 2023 harvest specifications for groundfish of the BSAI, unless otherwise noted.

For Pacific cod, the harvest specifications establish separate OFLs, ABCs, and TACs for the Bering Sea (BS) subarea and the Aleutian Islands (AI) subarea of the BSAI. As noted above, before the Pacific cod TACs are established, the Council and NMFS consider social and economic factors and management uncertainty, as well as two factors that are particularly relevant to BSAI Pacific cod: the Pacific cod state waters GHL fisheries and an overall limit on the maximum amount of TAC that can be specified for all BSAI groundfish species combined.

Once the groundfish TACs are established, regulations at 50 CFR 679.20(a)(7)(i) allocate 10.7 percent of the BS Pacific cod TAC and 10.7 percent of the AI Pacific cod TAC to the Community Development Quota (CDQ) Program for the exclusive harvest by Western Alaska CDQ groups. Section 305(i) of the Magnuson-Stevens Act authorizes six nonprofit corporations called CDQ groups representing 65 communities to receive exclusive harvest privileges of groundfish, including Pacific cod, and specifies the methods for allocating these harvest privileges.

After subtraction of the CDQ allocation from each TAC, NMFS combines the remaining BS and AI TACs into one BSAI non-CDQ Pacific cod TAC, which is available for harvest by nine non-CDQ fishery sectors. BSAI Pacific cod have been fully allocated to these sectors since 2008 with the implementation of Amendment 85 to the BSAI groundfish FMP (72 FR 50787, September 4, 2007). Regulations at § 679.20(a)(7)(ii)(A) define the nine Pacific cod non-CDQ fishery sectors in the BSAI and specify the percentage allocated to each. The non-CDQ fishery sectors are defined by a combination of gear type (*e.g.*, trawl, hook-and-line), operation type (*i.e.*, CV or CP), and vessel size categories (*e.g.*, vessels greater than or equal to 60 ft in length overall). Through the annual harvest specifications process, NMFS allocates an amount of the combined BSAI non-CDQ TAC to each of these nine non-CDQ fishery sectors. The non-

CDQ fishery sectors and the percentage of the BSAI non-CDQ Pacific cod TAC allocated to each sector are shown in Table 1 below.

Table 1—Allocations of the BSAI non-CDQ Pacific cod TAC to the non-CDQ Fishery Sectors

Non-CDQ Fishery Sector	Percentage allocation of the BSAI non-CDQ TAC
Hook-and-line CVs greater than or equal to 60 ft length overall (LOA)	0.2
Jig gear	1.4
Pot C/Ps	1.5
Hook-and-line and pot CVs less than 60 ft LOA	2.0
American Fisheries Act (AFA) trawl C/Ps	2.3
Pot CVs greater than or equal to 60 ft LOA	8.4
Non-AFA trawl C/Ps (Amendment 80 C/Ps)	13.4
Trawl CVs	22.1
Hook-and-line C/Ps	48.7

Allocations of Pacific cod to the CDQ Program and to the non-CDQ fishery sectors are further apportioned by seasons. Season dates for the CDQ and non-CDQ fishery sectors are established at § 679.23(e)(5). In general, regulations apportion trawl gear allocations among three seasons that correspond to January 20 – April 1 (A season), April 1 – June 10 (B season), and June 10 – November 1 (C season) of the year. The specific season dates also are provided in the annual harvest specifications for groundfish of the BSAI. Depending on the specific CDQ Program or non-CDQ fishery sector allocation, between 40 and 70 percent of the Pacific cod allocation is apportioned to the A season, which is historically the most lucrative fishing season due to the presence of valuable roe in the fish and the good quality of the flesh during that time of year.

As noted in Table 1, the trawl CV sector is apportioned 22.1 percent of the BSAI Pacific cod non-CDQ TAC, which is further divided into seasonal allowances between the A, B, and C seasons. A season is issued 74 percent of the trawl CV sector's total apportionment, B season is issued 11 percent, and C season is issued 15 percent. The trawl CV sector impacted by the implementation of the PCTC Program would include all

trawl CVs that are assigned to an LLP license with a trawl gear endorsement for the BS and/or AI.

After NMFS deducts estimated incidental catch from the trawl CV sector apportionment, each seasonal allowance is assigned to the trawl CV sector as a BSAI directed fishing allowance (DFA). The DFA for the A and B seasons is the amount that would be available for harvest by the PCTC program cooperatives under the proposed LAPP. The DFA for the C season would remain available for harvest as a limited access fishery open to all CVs with the required trawl gear and area endorsements on the LLP license assigned to the vessel. Because the non-CDQ sector allocations continue to be defined BSAI-wide, sectors remain free to redeploy between the two areas. However, if the non-CDQ portion of the TAC in either sub-area (BS or AI) is reached NMFS will close directed fishing for Pacific cod in that subarea.

B. Groundfish License Limitation Program (LLP) Licenses

The Groundfish License Limitation Program (LLP) was implemented in 1998 (63 FR 52642, Oct. 1, 1998) and issued a limited number of LLP licenses to qualifying participants based on historical participation in the Federal groundfish fisheries off Alaska. The Council and NMFS have long sought to control the amount of fishing effort in the BSAI groundfish fisheries to ensure that the fisheries are sustainably managed and do not exceed established biological thresholds. One of the measures used by the Council and NMFS to control fishing effort, including in the BSAI Pacific cod fishery, is the LLP. A groundfish LLP license authorizes a vessel to participate in a directed fishery for groundfish in the BSAI in accordance with specific area and species endorsements, vessel and gear designations, and the maximum length overall (MLOA), or any exemption from the MLOA, specified on the license. With some limited exceptions, the LLP requires that each vessel that participates in federally managed groundfish fisheries off Alaska be designated on a groundfish LLP license. In other words, an LLP license is generally

required to participate in the BSAI groundfish fisheries. The LLP is authorized in Federal regulations at 50 CFR 679.4(k), definitions relevant to the program are at § 679.2, and prohibitions are at § 679.7.

All Federal Pacific cod harvesting activity in the BSAI requires an LLP license and the correct endorsements. The Council elected to have LLP license holders and eligible processors receive PCTC Program Quota Share (QS) instead of vessel owners.

C. Transferable AI Endorsements

Amendment 92 to the BSAI FMP (74 FR 41080, August 14, 2009) issued new AI area endorsements for trawl CV LLP licenses if minimum recent landing requirements in the AI were met. Under this action, NMFS issued AI trawl endorsements to (1) non-AFA catcher vessels less than 60 ft LOA, if those vessels made at least 500 metric tons (mt) of landings of Pacific cod in State of Alaska (State) waters adjacent to the Aleutian Islands Subarea during 2000 through 2006 (*i.e.* in the parallel fishery); and (2) non-AFA catcher vessels equal to or greater than 60 feet LOA if those vessels made at least one landing in State waters during the Federal groundfish season in the Aleutian Islands Subarea and made at least 1,000 mt of Pacific cod landings in the BSAI during 2000 through 2006. Amendment 92 intended to recognize the recent participation by CVs in the AI by allowing those vessels to extend their fishing operations to Federal waters using trawl endorsed LLP licenses.

The AI endorsements issued under Amendment 92 were intended to facilitate shoreside deliveries of Pacific cod to AI communities and provide additional harvest opportunities for non-AFA trawl vessels who had demonstrated a dependence on AI groundfish resources. The AI endorsements issued to LLP licenses used by non-AFA trawl CVs less than 60 ft are severable from the LLP license they were initially issued and transferable to another LLP licenses with a MLOA under 60 ft. The transferability provision was intended to allow smaller vessels operational flexibility and avoid

stranding an AI endorsement on an LLP license being used by a vessel that no longer fished in the AI. No other area endorsement in the LLP can be transferred separately from an LLP license.

NMFS modified the LLP license transfer regulations to clarify the process for transferring an AI endorsement independent of the LLP license. As part of that application process, the person would need to specify the LLP license to which the transferred AI area endorsement would be assigned.

D. Limited Access Privilege Programs

Section 303A of the Magnuson-Stevens Act authorizes the establishment of Limited Access Privilege Programs (LAPPs) that allocate limited access privileges, such as fishing quota, to a closed class of participants. The Council has recommended and NMFS has implemented LAPPs to address a wide range of fishery management objectives, including providing stability in fishery harvests, resolving allocative disputes, increasing the value of the fishery, minimizing bycatch to the extent practicable, providing for the sustained participation of fishery-dependent communities, and promoting safety. Another example of a North Pacific LAPP is the Central Gulf of Alaska (GOA) Rockfish Program. An extensive discussion of LAPPs can be found in sections 2.5 and 2.9.8 of the Analysis (see **ADDRESSES**).

By allocating quota shares and issuing exclusive harvest privileges to fishing cooperatives, a LAPP allows vessel operators to make operational choices to improve safety, reduce bycatch, and reduce discard of fish because the strong incentive to maximize catch in the minimum amount of time has been reduced. Vessel operators can choose to fish in a slower, less wasteful fashion, use modified gear with a lower harvest rate but which reduces bycatch, coordinate with other vessel operators to avoid areas of high bycatch, or otherwise operate in ways that limit bycatch and increase efficiency.

LAPPs can also improve the profitability of participating fishing operations. In most cases, LAPPs provide harvesters greater flexibility in tailoring their fishing operations to specific fisheries, which can reduce operational costs. Additionally, vessel operators may avoid costly improvements in vessel size or fishing power designed to outcompete other harvesters in a race for fish. Slower fishing rates can improve product handling and quality and increase the ex-vessel price of the fish delivered to the processor. Vessel operators can also choose to consolidate less profitable fishing operations onto fewer vessels through a cooperative system.

LAPPs can increase the costs of entering the fishery substantially because the expected long-term profits from the QS assigned to the permits increase their value, and, in most circumstances, permits must be purchased prior to entry. Increased cost of entry may limit the ability of persons without the financial wherewithal to purchase the permits or QS necessary to participate in these fisheries. Consolidation can limit employment opportunities as well, if fewer vessels are used to harvest the quota. Compliance costs can also increase to ensure that NMFS can monitor the harvesting and processing of fish. Administration of LAPPs typically requires greater effort and cost than non-LAPP fisheries due to the greater precision in catch accounting required to track the harvest of fish and proper debiting of accounts. Participants in LAPPs may also use their excess fishing capacity to expand operations into other fisheries that are not managed by LAPPs and increase the race for fish in those fisheries unless they are constrained. These and other effects have been addressed in the design of previous LAPPs by limiting the amount of consolidation in the fishery through caps on the ownership and use of QS.

E. PCTC Program Overview

Based on experience with past LAPPs, and after weighing the potential advantages and disadvantages, the Council unanimously recommended the PCTC Program at its October 2021 meeting to reduce bycatch and improve the safety of fishery

participants while increasing the potential for greater economic returns to those holding the harvest privileges.

The Council had previously adopted a statement of purpose and need for this action, emphasizing that conditions in the fishery had resulted in a race for fish with a number of negative consequences. This proposed Program would be responsive to that statement of purpose and need by slowing the race for fish. This Program would provide incentives to increase the length of the directed fishing season and allow deliveries to be distributed over a longer timeframe, which would benefit both harvesters and processors. The current fishery management system, in which harvesters compete with each other for a portion of the Pacific cod TAC, incentivizes harvesters to fish in weather conditions that could be unsafe, and this incentive would be reduced or avoided under the proposed LAPP. Several conditions warranted this proposed change in management, including a decline in Pacific cod TAC, an increase in the number of LLP licenses (and associated vessels) participating in this sector and the risk of additional entrants, the compressed length of the fishery in recent years, the decreased product quality caused by a race for fish in recent years, need to minimize bycatch, and safety concerns.

In response, the Council recommended, and NMFS proposes the PCTC Program with the overarching objectives of increasing the value of the fishery, minimizing bycatch to the extent practicable, providing for the sustained participation of fishery-dependent communities, and promoting safety in the harvesting and processing sectors. The PCTC Program proposes a complex suite of measures to ensure the goals of the Program are met and improve fishery conditions for all participants. The Program would require participants holding QS to form harvesting cooperatives in association with an eligible processor to harvest the annual harvest privilege of Pacific cod. This Program would also require cooperatives to set-aside a portion of their allocation for delivery to an Aleutian Island shoreplant. A shoreplant is a land-based processing plant and is a subset of the

term “shoreside processor” which is defined in § 679.2 to include processing vessels that are moored or otherwise fixed in a location (*i.e.*, stationary floating processors), but not necessarily located on land.

The following section provides an overview of the complex suite of measures included in the proposed Program. Each Program element will be addressed in additional detail in subsequent sections of this preamble.

1. Pacific Cod Allocations and Prohibited Species Catch (PSC) Limits

The PCTC Program would allocate QS to qualifying LLP license holders and processors based on their qualifying catch and processing history during the BSAI trawl CV sector A and B season for the Pacific cod fishery. The Pacific cod QS allocations would be based on qualifying catch or processing history as recommended by the Council. In addition, aggregate PSC limits for halibut and crab would be established through the annual harvest specification process for participants in the PCTC Program. Allocations of Pacific cod and PSC limits are discussed in further detail in section II of the preamble.

2. PCTC Program Quota Share

The PCTC Program would issue QS to qualified LLP licenses that had qualifying catch history of BSAI Pacific cod during the qualifying years, and to processors based on their processing history during the qualifying years. The Council selected 2009 to 2019 as the qualifying years for processors and most LLP licenses, with the additional years of 2004 through 2009 for LLP licenses with transferable AI endorsements. In making initial allocations of QS, NMFS would look at targeted landings of BSAI Pacific cod from a Federal fishery during the qualifying years, and then determine what proportion of those landings were authorized by each participating LLP license, and which proportion was delivered to each participating processor. Targeted species are those species retained in an amount greater than any other species for which a TAC is specified pursuant to §

679.20(a)(2). To use their QS, LLP license holders would be required to join a PCTC Program cooperative and processors would be required to associate with a cooperative. Trawl CVs eligible to participate in the proposed Program include all trawl CVs that are named on an LLP license with a trawl gear endorsement and BS and/or AI area endorsement. Section II in the preamble further discusses QS and participants.

3. Trawl CV Sector

The PCTC Program allocations would be harvested by trawl CVs that join a PCTC Program cooperative. The trawl CV sector that would be eligible to participate in the proposed Program includes all trawl CVs designated on an LLP license with BS and/or AI area endorsements, including both American Fisheries Act (AFA) and non-AFA trawl CVs.

Most AFA CVs rely heavily on pollock harvested in the BS, but Pacific cod is the second most important species in terms of volume for these vessels in aggregate. While nearly all the groundfish harvested by the larger AFA vessels is delivered to shoreside processors, many of the smaller AFA vessels deliver their catch to a mothership. AFA vessels are categorized as either exempt or non-exempt; AFA exempt means that they are not limited based on their catch history by sideboards, and AFA non-exempt means that they are limited by sideboards based on their catch history. The harvest of BSAI Pacific cod by AFA trawl CVs is currently managed through private inter-cooperative agreements.

Non-AFA trawl CVs are typically between 60 ft and 125 ft, but occasionally, vessels less than 60 ft participate in the sector. Fisheries important to non-AFA trawl CVs include BSAI Pacific cod, groundfish in the GOA, halibut IFQ (using longline gear), and salmon in the state commercial seine fisheries.

A total of 114 LLP licenses are assigned a trawl CV endorsement for the BS. Of those 114 LLP licenses, 42 also have an AI endorsement. One LLP license is endorsed

only for the AI, and that license has both a trawl endorsement and a hook-and-line endorsement. Annual estimates of the trawl CV sector's gross ex-vessel value for Pacific cod are provided in Section 2.8.7 of the Analysis.

Given that initial allocations under this proposed rule will be based on historical participation, no substantial shifts in patterns of fishery landings between communities are anticipated, nor are substantial shifts expected in the accompanying patterns of revenue accruing to municipalities in Alaska from local raw fish taxes or shared state fishery business taxes.

4. Processor Sector

The PCTC program would allocate QS to eligible processors, both shoreside and C/Ps acting as motherships, which could serve to stabilize landings in communities in proportion to their qualifying history of BSAI Pacific cod processing.

Eligible processors would be allocated a percentage of QS based on their processing history that would function to promote stability in the processing sector. Processors eligible to receive QS would include active processors who hold an active FFP or FPP. Eligible processors would be issued their QS on a new QS permit. Processor-issued QS would represent 22.5 percent of the total PCTC Program CQ each year.

Section 2.9.5 of the Analysis provides a count of the years processing firms were active (received deliveries of targeted Federal BSAI Pacific cod from trawl CVs). These counts represent all the processing firms (including C/Ps that are no longer eligible to process Pacific cod as a mothership) that were reported in the NMFS Catch Accounting System (CAS) data. Preamble sections II.E and VII.B and C describe the processor sector in further detail.

5. Allocations of TAC in the PCTC Program

Under this proposed PCTC Program, 22.1 percent of the annual BSAI Pacific cod non-CDQ TAC would continue to be allocated to the trawl CV sector using the current seasonal apportionments. Of that 22.1 percent, a portion is allocated for directed fishing by trawl CVs targeting Pacific cod (as DFAs), and another portion is reserved as an incidental catch allowance (ICA) for Pacific cod caught as bycatch in other BSAI trawl CV groundfish fisheries. Under the PCTC Program, A and B season DFAs would be issued as CQ to PCTC program cooperatives. Of the total PCTC Program annual allocations, 22.5 percent of CQ would be derived from QS allocated to processors and 77.5 percent would be derived from QS allocated to LLP license holders. Section IV discusses CQ and PCTC Program cooperatives in further detail. The C season would continue to be managed as a limited access fishery open to any trawl CV with the required area endorsements. Section VI.B of the preamble discusses the C season in further detail.

6. PCTC Program Cooperatives

The PCTC Program would authorize the formation of harvester cooperatives in association with an eligible processor. A cooperative would be formed by holders of qualified LLP licenses with trawl CV Pacific cod QS, in association with processors. Each LLP license could be assigned to only one cooperative. Each year, a cooperative representative would be required to submit an Application for PCTC Program Cooperative Quota. CQ would be issued to each cooperative by NMFS based on the aggregate QS of the cooperative members and associated processors. Cooperative associations could change on an annual basis without penalty. Cooperatives would be required to identify a list of trawl CVs eligible to harvest a portion of that cooperative's CQ in the annual cooperative application. Any trawl CV named on an LLP license with a BS and/or AI trawl endorsement could be identified as an eligible harvester within a

PCTC cooperative, regardless of whether the LLP license was issued QS. Section IV in this preamble further describes cooperatives in the PCTC Program.

7. AI CQ Set-Aside

The PCTC Program would require cooperatives to reserve 12 percent of the BSAI A season trawl CV sector CQ as a set-aside for delivery to an Aleutian Islands shoreplant if the City of Adak or the City of Atka files a notice of intent to process that year. The set-aside would be in effect during the A and B seasons and any remaining portion of the AI CQ set-aside would be reallocated to cooperatives in the same proportion as the initial allocation if the intent to process is withdrawn during the A or B season by the representative of the City of Adak or the City of Atka. NMFS would require an inter-cooperative agreement that describes how the set-aside will be administered by the cooperatives to ensure that harvests from the BS do not exceed the minimum set-aside, how the cooperatives intend to harvest the set-aside, and how cooperatives would ensure that CVs less than 60 ft LOA assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to harvest 10 percent of the AI set-aside for delivery to an Aleutian Island shoreplant. A cooperative intending to harvest any amount of the set-aside would be required to provide the cooperative's plan for coordinating harvest and delivery of the set-aside with an Aleutian Island shoreplant in the annual cooperative application.

8. C Season Limited Access Fishery

The PCTC Program would allocate only the A and B season non-CDQ Pacific cod trawl CV DFA to cooperatives. The C season non-CDQ Pacific cod trawl CV DFA, which accounts for approximately 15 percent of the annual trawl CV sector allocation, would remain as a trawl CV limited access fishery open to any trawl CV with a BS and/or AI area trawl endorsement.

9. Use Caps

The PCTC program would include ownership and use caps to prevent a permit holder from acquiring an excessive share of the fishery as required under MSA Section 303A(c)(5)(D). No person would be permitted to hold more than 5 percent of harvester-issued QS or 20 percent of processor-issued QS. In addition, no vessel would be able to harvest more than 5 percent of the annual CQ, and no company would be able to process more than 20 percent of CQ. The PCTC Program would also include legacy exemptions for persons over these ownership and use caps at the time of PCTC Program implementation, allowing participants to maintain levels of historical participation rather than forcing divestiture.

10. Gulf of Alaska Sideboard Limits

The PCTC Program includes GOA groundfish sideboard limits for LLP licenses that receive allocations of QS. The Program would change the AFA non-exempt GOA groundfish sideboard and halibut PSC limits for all non-exempt AFA CVs and associated LLP licenses based on the GOA fishing activity of these vessels in the aggregate during the PCTC Program qualifying years. GOA halibut PSC limits would be managed as an annual limit for all AFA non-exempt CVs and associated LLP licenses. The proposed PCTC Program does not change existing sideboard exemptions for AFA GOA-exempt CVs and does not add sideboard limits for non-AFA trawl CVs in the GOA.

However, holders of LLP licenses that authorize these categories of vessels will not be permitted to lease CQ derived from their LLP licenses as a condition of benefiting from a GOA sideboard exemption. If the vessel assigned to the qualified GOA sideboard-exempt LLP license does not fish in the GOA during the calendar year—with the exception of fishing in the Central GOA Rockfish Program—the LLP license holder would be able to lease CQ generated by their LLP license for that calendar year. In addition, holders of LLP licenses that authorized GOA sideboard-exempt CVs with less

than 300 mt of average annual qualifying BSAI Pacific cod catch history would be able to lease CQ generated by their LLP license.

11. Monitoring and Enforcement

All CVs harvesting CQ and making deliveries to a shoreside processor would be in the full observer coverage category, which requires the vessel to maintain observer coverage on 100 percent of its fishing trips. The PCTC Program would maintain the current observer coverage exception for CVs delivering unsorted codends to motherships specified at § 679.50 (a). CVs in the full observer coverage category would be required to provide a functional and operational computer with NMFS-supplied software installed to facilitate the electronic entry of observer data collected on board the vessel. At the time of Program implementation, AFA CVs would be required to provide communications equipment necessary to facilitate the point-to-point communication necessary to transmit observer data to NMFS on a daily basis. For the first three years after implementation, the PCTC Program would exempt non-AFA CVs from the requirement to facilitate at-sea transmission of observer data. If a non-AFA CV has the necessary communication equipment already installed on the vessel prior to the end of the 3-year exemption, the vessel would be required to allow the observer to use the equipment. After three years, all vessels would be required to comply with requirements for at-sea observer data transmission. Monitoring and enforcement provisions would be implemented to track quota, harvest, PSC, and use caps. NMFS would report weekly vessel-level PSC information as authorized under Magnuson-Stevens Act Sec 402(b)(2)(A).

II. PCTC Program Quota Share (QS)

Under the PCTC Program, QS for Pacific cod would be assigned to eligible LLP licenses (with and without transferable AI endorsements) and newly created processor PCTC Program QS permits. The amount of QS allocated to individual LLP licenses or processors would be determined by historic participation relative to other LLP licenses or

processors, as described below. QS holders would be required to join or associate with a cooperative, and the aggregate QS of cooperative members and associated processors would yield an exclusive harvest privilege for PCTC Program cooperatives, which NMFS would issue as CQ each year. Of the total annual CQ, 77.5 percent would be derived from QS issued to LLP licenses and 22.5 percent would be derived from QS issued to processors. CQ would represent a portion of the A and B season BSAI trawl CV sector Pacific cod DFA that is available only to the holders of CQ. This Program would establish criteria for harvesters and processors in the BSAI trawl CV sector Pacific cod fisheries to qualify for and receive QS, criteria for allocating QS in the initial year of implementation, and criteria for the transfer of QS.

NMFS would assign PCTC Program QS to eligible LLP licenses based on qualifying catch history (legal landings) of targeted BSAI Pacific cod authorized by that LLP license during the qualifying years 2009 through 2019, excluding the year with the lowest total harvest for each license. The qualifying period for LLP licenses with transferable AI endorsements also includes harvest by vessels that generated the transferable AI endorsement from January 20, 2004 through September 13, 2009. The amount of QS assigned to an LLP license relative to the total QS assigned to all LLP licenses determines the percentage of the harvesters' allocation (77.5 percent of the A and B season DFA) that a harvester could designate to a cooperative.

Allocations of QS to processors with an eligible FFP or FPP (subject to eligibility requirements under BSAI FMP Amendment 120 to limit C/Ps acting as mothership) is based on processing history in the Federal BSAI Pacific cod trawl CV fishery. QS would be assigned to eligible processors based on each processor's targeted Pacific cod processing history during the qualifying years 2009 through 2019, excluding the year with the least amount of processing history. The amount of QS assigned to a processor PCTC Program QS permit relative to the total QS assigned to all PCTC Program QS

permits determines the percentage of the processors' allocation (22.5 percent of the A and B season DFA) that a processor could designate to a cooperative. NMFS would assign QS to holders of eligible LLP licenses if they submit a timely and complete Application for PCTC Program QS. A similar process would be used for the processor QS allocation. Processors with qualifying processing history would be assigned QS on a processor permit for each unit of processing history.

A. Eligibility to Receive PCTC QS

This section defines and describes the requirements necessary to identify eligible LLP licenses and processors that would receive PCTC Program QS. "Eligible PCTC Program LLP license" means an LLP license assigned to a vessel that made qualifying catch history (legal landings) of targeted trawl CV BSAI Pacific cod during the PCTC Program qualifying years. "Eligible PCTC Program processor" means a processing facility with an active Federal processor permit that has historically received Pacific cod legal landings.

"Legal landings" means the retained catch of Pacific cod caught by a CV using trawl gear in the BSAI during the directed fishing season for Pacific cod that was: (1) made in compliance with state and Federal regulations in effect at that time, (2) recorded on a State of Alaska fish ticket or shoreside logbook for shoreside deliveries or in observer data for mothership deliveries, and (3) was the predominately retained species on the fishing trip (*i.e.* Pacific cod was targeted). A legal landing must have been authorized by either (1) an LLP license participating in the A or B season of a Federal or parallel State water groundfish fishery during the qualifying years 2009 to 2019, or (2) an LLP license with a transferable AI endorsement that, prior to receiving that AI endorsement, participated in the AI parallel fishery from January 20, 2004 through September 13, 2009. Legal landings for the PCTC Program would not include landings in the CDQ fishery, in the State of Alaska GHL fishery, or made during the C season by

vessels participating in a Federal or parallel State water fishery. For LLP licenses, NMFS would determine which LLP licenses were assigned to catcher vessels that harvested and offloaded BSAI Pacific cod that met all legal landings requirements. For processors, NMFS would determine which processors with active Federal permits received deliveries of legal landings of BSAI Pacific cod.

B. Rationale for Allocations

The Council recommended and NMFS proposes establishing eligibility for the Program by considering the catch history associated with LLP licenses that authorized a vessel to make legal landings of targeted BSAI trawl CV Pacific cod during the qualifying years. The Council recommended against considering catch history occurring after December 31, 2019 during the development of this Program to discourage speculative entry into the fishery. QS would be allocated to eligible LLP licenses based on legal landings of BSAI trawl CV Pacific cod from 2009 through 2019. In addition, for LLP licenses with transferable AI endorsements, NMFS would consider catch history of targeted AI Pacific cod in the parallel fishery prior to receiving a transferable AI endorsement from January 20, 2004 through September 13, 2009. The Council recommended these qualifying years to ensure that both current and historical participation would be considered in allocating QS. This range of qualifying years is comparable with the Council's recommendations for awarding catch history in other rationalized fisheries (or fisheries managed under a LAPP).

The Council considered alternative methods for allocating QS to participants in the BSAI trawl CV Pacific cod sector in the development of the Program. These alternatives are addressed in the Analysis developed to support this proposed action (see **ADDRESSES**). The Program would balance allocation among recent and historical participants. As with other QS programs (*e.g.*, BSAI Crab Rationalization, and IFQ halibut and sablefish), the Program would allocate QS based on recent and historical

harvesting and processing, as opposed to alternative allocative methods such as allocating equal shares or auctioning QS. In other North Pacific quota share programs, NMFS has allocated QS based on landings that occurred during a specific time period as a means of equitably distributing QS to participants based on their relative dependence on the fishery. This is the first LAPP in the North Pacific that allocates harvester QS to processors based on their processing history.

One option for this Program considered the most recent five years of history (2014 through 2019) in the BSAI trawl CV Pacific cod fishery, but that range of years undervalued long-term participation, which the Council believes is an important consideration for the PCTC Program. A second option the Council rejected included catch history years from 2004 through 2019 because it would include several years before the implementation of the current BSAI Pacific cod sector allocations established by Amendment 85. These sector allocations, combined with a decline in the BSAI Pacific cod stock in recent years, have substantially changed fishery management and operations.

A third option the Council considered included allocations on a blend of catch history and AFA sideboard limit history. This approach would have awarded catch history to LLP licenses assigned to vessels that did not make legal landings of BSAI trawl CV Pacific cod during the qualifying years but instead had catch history of BSAI Pacific cod from 1997 that contributed to a sideboard limit for all AFA trawl CVs in the BSAI. The Council recommended maintaining the long-standing policy that sideboard limits are not sector allocations. Instead, this proposed Program would award catch history to LLP licenses based on legal landings that were reported by the vessel assigned to the LLP license, consistent with the Council's past practice.

In calculating QS to be issued to eligible LLP license holders and processors, the lowest year of catch history during the qualifying period would be dropped. Including a one-year drop provision would allow all participants to benefit from removing a non-

representative participation year from the catch history used to issue their QS. The public testimony provided to the Council in support of this option noted that the catch history eligibility period is 11 years, and unforeseen events have occurred for many BSAI trawl CV Pacific cod fishery participants over that period that would reduce the amount of catch history awarded to their LLP license. The Council considered this to be a reasonable approach and consistent with Council and NMFS's practice in previous rationalization programs because it recognizes contingencies in fishing behavior over the qualifying years.

Some legal landings during 2009 through 2019 were made by vessels with two or more associated LLP licenses, and in these cases the Council recommended assigning the qualifying catch history to one LLP license in one of two ways. First, the LLP license owners may come to an agreement regarding the division of qualifying catch history and submit this agreement to NMFS when they apply for QS. Or, if no agreement is provided by the LLP license holders, the owner of the vessel that made the qualifying catch would assign the history to one of the LLP licenses that authorized the catch. This approach is consistent with NMFS's approach for assigning legal landings in all previous North Pacific rationalization programs. In addition, the Council received public comment in support of this approach.

The Council determined that an allocation of harvest QS to processors is necessary to provide stability to the sectors involved in the fishery after it transitions from a limited access fishery to a LAPP. The Analysis (see **ADDRESSES**) did not identify an optimal percentage of QS that should be allocated to processors to provide stability for harvesters and processors. Instead, the allocation amount recommended and proposed in this action—77.5 percent of QS allocated to harvesters and 22.5 percent to processors—is based on an agreement brought to the Council by members of the affected CV and processing sectors. Analysts noted that within the range of percentages considered for QS

to be issued to processors, the leverage that each sector would have at any specific percentage would vary and the effects are likely to be most realized by firms that have less leverage outside the BSAI trawl CV Pacific cod fishery.

Under the proposed Program, NMFS would allocate QS to eligible processors based on their processing history of legal landings of BSAI Pacific cod during the qualifying years. The QS issued to processors would be divided among eligible processors based on the percentage of legal landings of Pacific cod they processed during the A and B seasons during the qualifying years compared to the total legal landings of BSAI Pacific cod processed by all eligible processors. Allocating harvest shares to processors is intended to maintain a balance of market power within the industry under the LAPP.

C. Calculations of Initial Allocations

The Council recommended, and NMFS proposes to set initial allocations through a specific process set forth in this section.

The QS allocations for LLP license holders with no transferable AI endorsement would be calculated based on the sum of the 10 highest years of Pacific cod qualifying catch for the LLP license out of the 11 qualifying years recommended by the Council. If an LLP license was only used in a single year or if the LLP license was used in ten or less years, a year with no qualifying catch would be dropped. If the LLP license was transferred within the qualifying years of 2009 to 2019, all legal landings during the period would still be assigned to that LLP. For LLP licenses with transferable AI endorsements, NMFS would also include the catch history of the vessel used to generate the endorsement from January 20, 2004 through September 13, 2009 (for these LLP licenses, NMFS would be looking at 16 years of catch history and dropping the lowest year). The current LLP license owner would be entitled to all QS derived from the LLP license and transferable AI endorsement catch history, unless compensation was required

by a private agreement associated with the sale of the LLP license. The QS would not be divided among LLP licenses.

NMFS proposes that for each LLP license holder, the qualifying year with the least amount of legal landings be dropped, and the total of the remaining years summed to determine the LLP license's QS units. This process would be done for all eligible LLP licenses, with and without transferable AI endorsements. The sum of all QS units issued would determine the harvesters total initial QS pool allocated to LLP licenses. All harvester QS units combined would represent 77.5 percent of the A and B season BSAI Pacific cod trawl CV DFA.

An active processor would be eligible to receive initial QS allocations in the PCTC Program if they hold a Federal Fisheries Permit (FFP) or Federal Processing Permit (FPP) with processing history in the Federal BSAI Pacific cod trawl CV fishery between 2009 and 2019, which is the set of qualifying years recommended by the Council. An active processor is a processor firm that holds an FFP or FPP upon the effective date of the final rule implementing this Program.

The QS for processors would be allocated based on the sum of legal landings delivered in the 10 highest years out of the 11 qualifying years recommended by the Council. If the FFP or FPP received deliveries of qualified catch in ten years or less, a year with no qualifying legal landings would be dropped. Processing companies that are no longer active—meaning that they do not have a current FFP or FPP upon the effective date of the final rule implementing this Program—would not be issued QS.

For each processor, the sum of all years of deliveries of legal landings is calculated, the year with the smallest amount of delivered legal landings is dropped, and the total of the remaining years determines the FFP or FPP's QS units. This process is done for all processors. The sum of all the processor QS units would determine the

denominator of the initial QS pool for processors. All processor QS units combined would represent 22.5 percent of the A and B season BSAI Pacific cod trawl CV DFA.

D. PCTC Program Official Record

NMFS would establish a PCTC Program official record containing all necessary information concerning PCTC Program legal landings during the qualifying period, vessel and processor ownership, LLP license holdings, and any other information needed for assigning QS. The official record would include landings data (from the Catch Accounting System), documentation of LLP licenses, FFPs, and FPPs, and observer data. NMFS would presume the official record is correct and an applicant wishing to amend the official record would have the burden of establishing otherwise through an evidentiary and appeals process. That process is described in Section III.C of this preamble below.

The official record would be used to establish the initial pool of QS that would be distributed to eligible harvesters and processors.

Each metric ton of legal landing credited to a qualifying LLP license would result in one QS unit. This initial QS pool would be adjusted should the official record be amended through successful claims brought by an eligible participant or other corrections to the underlying data. See Parts E and F of this section below for more detail. As with other LAPPs (*e.g.*, Central GOA Rockfish Program or the Amendment 80 Program), NMFS would establish ownership and use caps using this initial QS pool. Ownership and use caps are described further under Section VII of this preamble.

E. Harvester Allocations of QS in the PCTC Program

Under this proposed rule, the Regional Administrator would allocate PCTC Program QS to an eligible harvester—*i.e.* LLP license holder—who submits a timely Application for PCTC Program QS that is approved by NMFS based on the amount of BSAI trawl Pacific cod legal landings assigned to an LLP license.

NMFS proposes to assign a specific number of Pacific cod QS units to each LLP license with no transferable AI endorsement based on the legal landings of the LLP license using information from the PCTC Program official record as of December 31, 2022 according to the following procedures:

- (1) Determine the BSAI trawl CV Pacific cod legal landings authorized by an LLP license for each calendar year from 2009 through 2019.

- (2) Drop from consideration the calendar year in which the LLP license had the least amount of legal landings. If an LLP license had one or more years with zero harvest, drop one of those years.

- (3) Sum the Pacific cod legal landings for the 10 years in which each LLP license had the most landings. This yields the QS units for each LLP license.

NMFS proposes to assign a specific number of Pacific cod QS units to each LLP license with a transferable AI endorsement based on the legal landings of each vessel that was used to generate the transferable AI endorsement and subsequent legal landings authorized by the LLP license associated with the endorsement using information from the PCTC official record according to the following procedures:

- (1) Determine the BSAI trawl CV Pacific cod legal landings for each vessel used to generate the transferable AI endorsement from January 20, 2004 through September 13, 2009 and the LLP license associated with that transferable AI endorsement from September 14, 2009 through the end of 2019.

- (2) Drop from consideration the calendar year which the vessel used to generate the transferable AI endorsement (January 20, 2004 – September 13, 2009) or the associated LLP license (2009 – 2019) that had the least amount of legal landings. If a vessel or LLP license had one or more years with zero harvest, drop one of those years.

(3) Sum the Pacific cod legal landings for the 15 years in which the relevant LLP license had the highest amount of legal landings. This yields the QS units for LLP licenses with transferable AI endorsements.

After the QS units for the LLP licenses with and without transferable AI endorsements are determined under part 3 of each scenario above, NMFS would sum all harvester QS units to calculate the harvesters' total QS pool. NMFS would then determine what portion of the 77.5 percent of the A and B season DFA allocated as harvester QS under the PCTC Program is represented by each LLP license's QS units. To do so, NMFS would divide each LLP license's total QS units by the sum (Σ) of all QS units for all eligible LLP licenses based on the PCTC official record as presented in the following equation:

$$\text{LLP license's QS units} / (\Sigma \text{ QS units for all LLP licenses}) \times 100 = \text{Percentage of}$$

the total harvester QS pool allocated to that eligible LLP license. The result (quotient) of this equation is the percentage of the total harvesters' portion of PCTC Program allocation (77.5 percent of the A and B season DFA) that a QS holder could assign to a cooperative each year.

F. Processor Allocations of QS in PCTC Program

The Council recommended and NMFS proposes allocating harvest shares to processors to provide stability to all of the sectors involved in the fishery after it transitions from status quo conditions to the PCTC Program.

Under the Program, processors with an eligible FPP or FFP that have history of processing in the Federal BSAI Pacific cod trawl CV fishery would be eligible to receive QS based on each processor's processing history (subject limitations on the number of C/Ps authorized to operate as motherships under BSAI FMP Amendment 120).

Processors eligible to receive QS would be issued a new PCTC Program processor QS

permit and could annually associate with a PCTC Program cooperative. Harvesters in the cooperative would then have access to the CQ derived from processor-held QS.

If a processor holding QS does not associate with a cooperative, that processor's QS would be divided among cooperatives in the same proportion as the CQ assigned to individual cooperatives that year. If a processor associated with more than one cooperative during a year, the CQ derived from their processor permit would be divided among the cooperatives in the same proportion as the CQ derived from LLP licenses within each associated cooperative.

Cooperatives would have some limitations on the manner in which they can use CQ derived from processor-held QS. To address vertically integrated companies where a processing company may also own LLP licenses or CVs, the Council intended processor held QS to be divided among cooperative CVs proportionately to the QS attached to LLP licenses onboard the harvesting vessel. In other words, a cooperative should not allow a CV or LLP license owned by that processor to harvest a greater proportion of the CQ resulting from processor-held QS than the LLP license would have brought into the cooperative absent any processor-held QS. The cooperative would monitor this provision and include reporting on harvest of CQ resulting from processor-held QS in the PCTC Program cooperative annual report.

Processors that are no longer active (no longer hold an FPP or FFP upon the effective date of the final rule implementing this Program) would not be issued QS. The processing history associated with those processors would be deducted from the total amount of eligible processing history during the qualifying years when calculating the distribution of QS to processors.

NMFS proposes to assign a specific number of Pacific cod QS units to each processor permit based on the qualifying landings delivered to the processor using

information from the PCTC official record as of December 31, 2022 according to the following procedures:

(1) Determine the BSAI trawl CV Pacific cod legal landings in the A and B seasons delivered to each eligible processor for each calendar year from 2009 through 2019.

(2) Drop from consideration the calendar year in which the processor received the least amount of legal landings. If a processor had one or more years with zero processing of Pacific cod legal landings, drop one of those years.

(3) Sum the Pacific cod legal landings of the highest 10 years for each eligible processor. This yields the QS units for each processor.

(4) Divide the QS units for each eligible processor by the sum (Σ) of all QS units for all processors based on the PCTC official record as presented in the following equation:

$$\text{Processor's QS units} / \Sigma \text{ all processor QS units} \times 100 = \text{Percentage of the total processor QS allocation for that processor.}$$

The result (quotient) of this equation is the percentage of the total processors' portion of PCTC Program allocation (22.5 percent of the A and B season DFA) that a QS holder could designate to a cooperative each year.

Table 2–PCTC Program Initial QS Pool in Units

Species	PCTC Program initial QS pool in units
Pacific cod (Holders of LLP Licenses with no transferable AI endorsement)	Σ highest 10 years of BSAI Pacific cod catch history in metric tons in the PCTC official record as of December 31, 2022 for LLP license holders.
Pacific cod (Holders of LLP licenses with transferable AI endorsements)	Σ highest 15 years of BSAI Pacific cod catch history in metric tons in the PCTC official record as of December 31, 2022 for holders of LLP licenses with transferable AI endorsements.
Pacific cod (All processors)	Σ highest 10 years BSAI Pacific cod processing history in metric tons in the PCTC official record as of December 31, 2022 for that BSAI Pacific cod for eligible processors.

G. PSC Limits in PCTC Program

The Council's experience with rationalization programs has shown that, as the race for fish ends, fleets can make operational choices that promote reductions in PSC. Reducing PSC is an important benefit of the Program and reflects a substantial amount of public testimony highlighting the importance of minimizing bycatch to the extent practicable in this rationalization program consistent with the Council's purpose and need statement and National Standard 9.

PCTC Program cooperatives would annually be apportioned halibut and crab PSC limits based on the percentage of total BSAI Pacific cod CQ allocated to their cooperative (derived from both harvester and processor allocations of QS). NMFS would monitor PSC use at the sector level and cooperatives would be responsible for managing PSC limits at the cooperative level. Cooperatives would be prohibited from fishing under the Program if a halibut PSC limit is reached for the cooperative or from fishing in a crab bycatch limitation zone if a crab PSC limit is reached in that relevant area. PSC limits may be transferred between cooperatives to cover any overages or to allow a cooperative to continue harvesting Pacific cod CQ.

Halibut PSC

Annually, the Council recommends to NMFS an apportionment of the total halibut PSC allowances for the BSAI trawl limited access sector. The BSAI trawl limited access sector is composed of the trawl CV sector and the AFA C/P sector. The specific percentage of the total halibut PSC limit assigned to the trawl limited access sector may change annually based on the Council's recommendation. Each year after apportioning the halibut PSC limit to the trawl CV sector for the A and B season, NMFS will apply a fixed percentage reduction to that PSC limit. In the first year of the program, NMFS will apply a 12.5 percent reduction, and in the second year and each year thereafter, NMFS will apply a 25 percent reduction (see section 2.10.3.1).

Because this halibut PSC reduction is limited to the PCTC Program, it would apply only to the halibut PSC apportionment for the A and B season Pacific cod trawl CV sector. The recommended reduction to halibut PSC limits under the Program would be calculated annually and published in the annual harvest specifications after the Council recommends and NMFS approves the BSAI trawl limited access sector's PSC limit apportionments to fishery categories.

Under the Program and this proposed rule, NMFS would apportion halibut PSC limits assigned to the BSAI trawl limited access sector Pacific cod fishery between the trawl CV and AFA C/P sectors. Specifically, the halibut PSC limit would be divided between the trawl CV and AFA C/P sectors based on historical use during the qualifying years, with 98 percent apportioned to trawl CVs and 2 percent apportioned to AFA C/Ps. NMFS would further apportion the halibut PSC for the trawl CV sector between the PCTC Program (A and B seasons) and the trawl CV Pacific cod C season. The C season apportionments would be established before applying PSC limit reductions described above. Of the halibut PSC limit apportioned to the trawl CV sector, 95 percent would be available for the PCTC Program in the A and B seasons with 5 percent reserved for the C season. Any amount of the PCTC Program PSC limit remaining after the B season would be reallocated to the trawl CV limited access fishery in the C season.

Currently, 50 CFR 679.21(b)(2) and (e)(5) authorize NMFS, based on Council recommendations, to establish seasonal apportionments of halibut and crab PSC limits for the BSAI trawl limited access sector fishery categories to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize PSC mortality to the extent practicable. The factors considered annually are (1) seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species relative to prohibited species distribution, (3) PSC needs on a seasonal basis relevant to prohibited species biomass and expected catches of target groundfish species, (4) expected variations in

PSC rates throughout the year, (5) expected changes in directed groundfish fishing seasons, (6) expected start of fishing effort, and (7) economic effects of establishing seasonal PSC apportionments on segments of the target groundfish industry. Based on these criteria, the Council recommends, and NMFS annually publishes the proposed seasonal PSC limit apportionments to maximize harvest among fisheries and seasons while minimizing PSC mortality.

The halibut PSC limit for the BSAI trawl limited access sector is established at 745 mt (§ 679.21(b)(1)). The BSAI trawl limited access sector halibut PSC limit is further divided by fishery categories during the annual specifications process, with 391 mt (52.5 percent) of the sector limit designated for use in the BSAI Pacific cod fishery in 2019. The halibut PSC limit for the BSAI trawl limited access sector is an annual limit that is currently not apportioned by season.

The following example using 2019 halibut PSC limits illustrates how the PSC reduction under the PCTC Program would work once fully implemented. The total 2019 BSAI trawl limited access sector halibut PSC limit apportionment to the Pacific cod fishery category was 391 mt. Had the Program been in place, 98 percent of that total would have been apportioned to the trawl CV Pacific cod sector (383 mt) while the remaining 2 percent would have been apportioned to the AFA C/P sector (9 mt). The trawl CV halibut PSC limit portion (383 mt) would have been further apportioned between the rationalized A and B seasons at 95 percent (364 mt) and the non-rationalized C season at 5 percent (19 mt). Finally, the halibut PSC limit for the rationalized A and B seasons would have been reduced by 25 percent to 273 mt, resulting in a halibut PSC limit savings of 91 mt. Any amount of the PCTC Program halibut PSC limit remaining after the B season would have been rolled over to the C season trawl CV limited access fishery but future savings in halibut PSC that is achieved by not allocating 25 percent of

the PSC limit apportioned to the trawl Pacific cod sector in the A and B season would not be used or reallocated for use in other fisheries.

Crab PSC

The Council recommended, and NMFS proposes, a 35 percent reduction in crab PSC limits for PCTC Program trawl CVs during the A and B season. For the crab PSC limits, the 35 percent reduction in PSC limits for the PCTC Program would be effective immediately when the Program is implemented (no phase-in). The annual crab PSC limits available to the BSAI trawl limited access sector Pacific cod fishery category would be apportioned between the trawl CV sector and the AFA C/P sector based on the proportion of BSAI Pacific cod allocated to the two sectors: 90.6 percent to BSAI trawl CVs and 9.4 percent to AFA C/Ps.

Crab PSC limits include red king crab (Zone 1), *C. opilio* (COBLZ), and *C. bairdi* (Zone 1 and Zone 2), are specified annually based on abundance and spawning biomass and are established by regulation for the BSAI trawl limited access sector, which is divided between the trawl CV and the AFA C/P sectors (§ 679.21(e)(3)(iv)). Using the 2019 crab PSC limits as a reference point combined with the recent decrease in abundance and biomass estimates, we can calculate that the proposed 35 percent reduction in crab PSC limits in 2022 would have resulted in an 80 percent reduction for red king crab (Zone 1), a 69 percent reduction for *C. opilio* (COBLZ), and a 48 percent reduction for *C. bairdi* (Zone 1 and Zone 2).

Crab PSC limits would be based on the proportion of BSAI Pacific cod allocated to the trawl CV sector (90.6 percent) and the AFA C/P sector (9.4 percent). Of the crab PSC limit apportioned to the trawl CV sector, 95 percent would be available for the PCTC Program (A and B seasons) and 5 percent would be reserved for the C season. As with halibut PSC, any amount of the PCTC Program PSC limit remaining after the B season would be reallocated to the C season trawl CV limited access fishery.

The following example using 2019 crab PSC limits illustrates how the PSC reduction would work once fully implemented. The 2019 BSAI trawl limited access sector red king crab (zone 1) PSC limit apportionment to Pacific cod fishery category was 2,954 animals, which would result in 2,676 animals apportioned to the BSAI trawl CVs and 278 animals apportioned to the AFA C/Ps. Had the Program been in place, the BSAI trawl CV crab PSC limit would have been further apportioned between the rationalized A and B seasons at 95 percent and the non-rationalized C season at 5 percent. Thus, 2,542 animals would have been apportioned to the rationalized A and B seasons and 134 animals would have been apportioned to the C season. Finally, the crab PSC limit for the rationalized A and B seasons would have been reduced by 35 percent, resulting in a limit of 1,652 animals, which would have been a savings of 890 animals. Any amount of the PCTC Program crab PSC limit remaining after the B season would be rolled over to the C season trawl CV limited access fishery, but future reductions in crab PSC would not be allocated and therefore would not be available for use or reallocation for use in other fisheries.

III. Application Process

A. Application for PCTC QS

A person would be required to submit an Application for PCTC Program QS in order to receive an initial allocation of PCTC QS. NMFS would require an application to ensure that QS is assigned to the appropriate person(s) and to provide a process for resolving claims of legal landings that are contrary to the official record. Once a person submits an Application for PCTC Program QS that is approved by NMFS, that person would not need to resubmit an application for QS in future years.

A completed Application for PCTC Program QS must be received by NMFS no later than 1700 hours AKST 30 days after the effective date of the final rule or, if sent by

U.S. mail, postmarked by that time. Objective written evidence of timely application will be considered proof of a timely application.

NMFS will mail an application package to all potentially eligible LLP license holders, AI endorsement holders, and processors based on the address on record at the time the application period opens upon effectiveness of the final rule. This package would include a letter informing potentially eligible LLP license holders and processors whether NMFS has determined they are eligible to receive QS, and if so, the amount of qualifying catch history calculated by NMFS based on the official record. Applications will be available on the Alaska Region website and interested persons could also contact NMFS to request an application package. An application could be submitted electronically or by mail.

Briefly, the Application for PCTC Program QS would need to contain the following elements:

- Identification and contact information for the applicant;
- LLP licenses held by the applicant;
- FFP or FPP held by the applicant;
- Any other information required on the application; and
- The applicant's signature and certification. If the application is completed by a third party on behalf of the potential QS recipient, authorization for that person to act on behalf of the potential QS recipient.

B. Ninety Day Transfer Window for Non-Exempt AFA LLP holders

For LLP licenses associated with AFA non-exempt vessels, within 90 days of initial issuance of QS, the owner of the LLP license may transfer QS to another LLP license associated with an AFA non-exempt vessel. These QS transfers are subject to the QS ownership cap further described in section VII.B of this proposed rule. This provision

allows LLP license holders that engaged in AFA sideboard harvesting agreements during the qualifying period to transfer resulting QS back to the originating LLP license.

The transferor and the transferee must submit to NMFS a letter as evidence of their agreement to transfer the QS in this one-time opportunity. In the letter, they must explain how much QS would be transferred and to which LLP license or licenses.

If only one party submits evidence of an agreement, the QS would remain with the LLP license to which it was initially assigned.

C. Application Review and Appeals

Persons applying for QS will state in their application whether or not they agree with NMFS's calculation of catch and processing history from the official record. If they disagree, they can submit supporting documentation regarding their catch history along with their application for QS. If any applicant disagrees with NMFS's initial calculations and provides documentation to support claims of catch history that are inconsistent with the official record, NMFS would determine whether such documentation is sufficient to amend the official record. If not, NMFS would inform the applicant that the submitted documentation was insufficient and provide the applicant with a 30-day evidentiary period to further support their claims. After the close of the 30-day evidentiary period, NMFS would make its final decision about the official record and issue an initial administrative determinations (IAD) to the applicant. IADs would include all the information described below. Applicants who disagree with the IAD may appeal NMFS's decision through the NOAA National Appeals Office according to the procedures found at 50 CFR 679.43.

NMFS's IAD would indicate the deficiencies and discrepancies in the application or revised application, including any deficiencies in the information or evidence submitted to support an applicant's claims challenging the official record. NMFS's IAD would indicate which claims could not be approved based on the available information or

evidence and provide information on how an applicant could appeal an IAD. An applicant who appeals an IAD would not receive any QS based on contested landings data unless and until the appeal was resolved in the applicant's favor. Once NMFS has approved an application for PCTC Program QS in its entirety, NMFS would assign QS units to an applicant's LLP license or issue a processor a PCTC Program QS permit with a specified number of QS units.

PCTC Program QS would be issued to the person identified in an approved application for QS. Once PCTC Program QS is issued, the QS units would remain attached to the associated LLP license or processor's PCTC Program QS permit in most circumstances and could not be severed or otherwise be transferred independently. There are several limited exceptions to non-severability: (1) QS attached to LLP licenses with transferable AI endorsements could be transferred along with the endorsement to another LLP license that meets the criteria for a transferable AI endorsement; (2) QS could be fully or partially transferred during the limited 90-day transfer provision described in section III.B of this proposed rule; (3) if a participant qualifies for a legacy exemption and receives an initial allocation of QS in excess of a program ownership cap, that participant's QS could be split during a transfer to prevent any recipient from exceeding a cap; and (4) QS could be separated from a processor QS permit in any transfer of processor-held QS if necessary to prevent any transferee from exceeding an ownership or use cap.

D. Transferring QS

1. Limits on Transferring QS

As stated above, once QS is assigned to an LLP license, it generally could not be divided or transferred separately from that LLP license. For LLP licenses with transferable AI endorsements, after issuance QS generally could not be divided or separated from the transferable endorsement. However, there is an exception for both

LLP licenses and processor-held QS permits that were initially issued QS greater than the ownership cap (*i.e.* for persons granted a legacy exemption from the ownership cap). For these QS holders, the amount of QS over the cap may be severed from the permit (and divided to multiple buyers) at the time of transfer because the QS caps do not allow a legacy exemption to extend beyond initial issuance. This provision would allow the transfer of an LLP license or processor-held QS permit subject to a legacy exemption without the transferee exceeding a QS ownership cap. In addition, for QS assigned to a processor holding a PCTC Program QS permit—even if the transferor does not hold QS in excess of any cap—QS could be divided or transferred separately from that processor permit if a sale would otherwise result in the transferee exceeding an ownership or use cap described in Section VII of this preamble. NMFS would not approve transfers of an LLP license with PCTC QS or a processor-held QS permit if the transfer would cause a person to exceed the 5 percent harvester QS ownership cap or the 20 percent processor QS ownership cap.

If a QS holder has a legacy exemption from the QS ownership cap, NMFS would not approve any QS permit transfers to that person unless and until that person's holdings of QS are reduced to an amount below the QS holdings cap.

2. Methods for Transferring QS

Any transfer of QS would require approval by NMFS to properly track ownership and use cap accounting. For harvesters, QS could be transferred with an LLP license or a transferable AI endorsement to another person through the existing LLP transfer provisions described in regulations at 50 CFR 679.4(k)(7).

3. Transferring PCTC Program QS

In order to transfer PCTC QS, a QS holder would submit to NMFS an application to transfer an LLP license or an application to transfer a processor QS permit. NMFS would require that the application include any additional information needed for the

transfer of QS, including the sale price of QS. Applications to transfer an LLP license with PCTC QS, a transferable AI endorsement with QS, or a processor-held PCTC Program QS permit could be submitted electronically (see proposed regulatory text at § 679.130 for detailed information). Transfer forms would be posted on the NMFS Alaska Region website.

B. CQ Transfers

Under this Program, a cooperative could transfer all or part of its CQ to another cooperative for harvest subject to the limitations imposed by the ownership and use caps described in Section VII of this preamble and the proposed regulations. Transfer provisions would provide flexibility for cooperatives to trade Pacific cod for harvest or PSC to support the PCTC program cooperative fishing. The ability to trade PSC allows cooperatives to account for unforeseen circumstances, but the incentive to avoid hitting a cooperative PSC limit remains because of the cost of acquiring PSC from another cooperative.

To effectuate an inter-cooperative transfer, a designated representative of each cooperative would need to agree to and complete a CQ transfer application, which would be available on eFish or on the NMFS Alaska Region website. A transfer of CQ would not be effective until approved by NMFS. If the cooperative attempting to acquire CQ has reached any relevant use caps, NMFS would deny the transfer application.

C. Cooperative Reports

Under the PCTC Program, cooperatives would be asked to provide voluntary annual reports to the Council. Consistent with other cooperative programs developed by the Council, these reports would include specific information on the structure, function, and operation of the cooperatives.

Each year, the Council would receive reports outlining the cooperatives' performance at one of its regularly scheduled meetings. These reports would be used by

the Council to ensure the program is functioning as intended and to solicit timely information on issues that may need to be addressed by the Council. The Council requested that each cooperative report include information on CQ leasing activities and any penalties issued, harvest of CQ resulting from processor-held QS, cooperative membership, cooperative management, and performance (including implementation of the AI set-aside when in effect).

IV. PCTC Program Cooperatives

The PCTC Program is a cooperative-based program that requires participants to join a cooperative each year. Cooperatives would receive annual CQ derived from the QS held by the harvesters and processors that join the cooperative. Under the Program, cooperative members could coordinate their fishing operations, potentially reduce operational expenses, and increase the quality and revenue from the product, among other benefits.

A. Requirements for Forming a PCTC Cooperative

Under the PCTC Program, forming a cooperative would require at least three LLP licenses with PCTC QS. Each cooperative would be required to associate with at least one licensed processor. There would be no limitation on the number of LLP licenses that may join a single cooperative, the number of processors a cooperative could associate with, nor on the amount of QS a single cooperative could control. There also would be no limitation on the number of cooperatives that may form, but each LLP license could be assigned to only one cooperative. A person may hold multiple LLP licenses, meaning that a single LLP license holder who holds three or more LLP licenses could form a cooperative in association with a processor.

Annually, each cooperative would be required to submit an Application for PCTC Program Cooperative Quota, identifying the CVs that would be eligible to harvest a portion of that cooperative's CQ. NMFS would process an application for CQ and, if

approved, issue CQ permits and apportioned amounts of annual crab and halibut PSC limits to the cooperative. CQ would constitute an exclusive harvest privilege for the A and B seasons. Under certain conditions, each cooperative would be required to set aside 12 percent of the A season CQ for delivery to an Aleutian Islands shoreplant as described further under the AI Community Protections section below. Cooperative members would determine their own harvest strategy, including which vessels could harvest the CQ.

An LLP License holder may change cooperatives and processor associations may change annually without penalty. However, harvesters may not change cooperatives and cooperatives may not change their processor associations during the PCTC Program fishing season. If an LLP license is sold or transferred during the season, it would remain with the cooperative until the end of the season. Inter-cooperative formation would be allowed and an inter-cooperative agreement would be required to implement the AI set-aside and to allow for efficient trading of CQ or PSC limits between cooperatives.

The following would be required to form a PCTC Program cooperative under the proposed Program:

- A complete Application for PCTC Program CQ must be submitted by November 1 of the year prior to fishing in the cooperative;
 - A copy of the business license issued by the state in which the PCTC cooperative is registered as a business entity;
 - A copy of the articles of incorporation or partnership agreement of the PCTC Program cooperative;
 - A list of the names of all persons, to the individual level, holding an ownership interest in the LLP licenses that join the cooperative and the percentage ownership each person and individual holds in each LLP license;
 - A list of trawl CVs eligible to harvest a portion of that cooperative's CQ;
- and

- A copy of the cooperative agreement signed by the members of the PCTC Program cooperative, which must include, at a minimum, the following terms: (1) QS holders affiliated with processors cannot participate in price setting negotiations except as permitted by antitrust law; (2) monitoring provisions, including sideboard protections in the GOA, sufficient to ensure compliance with the PCTC Program; and (3) a provision that specifies the obligations of PCTC QS holders who are members of the cooperative to ensure the full payment of cost recovery fees that may be due.

Annual CQ would be issued to each cooperative by NMFS based on the aggregate QS of all cooperative members. NMFS would issue CQ by season and rely on the cooperatives to ensure the seasonal limits are not exceeded. Any unused A season CQ may be harvested during the B season. CQ would not be designated for harvest in a management area (*i.e.*, BS or AI) but may be harvested from either area. However, NMFS will annually establish a separate AI DFA to support the calculation of the AI set-aside. For more information, see Section V of this preamble.

B. Application for Cooperative Quota (CQ)

The PCTC Program would require cooperatives to submit an annual application for CQ by November 1, which is prior to the start of each fishing year. NMFS would use these applications to issue CQ permits, establish annual cooperative accounts for catch accounting purposes, and identify specific vessels that would be associated with each cooperative. As with other LAPPs, the information received in this application would be used to review ownership and control information for various QS holders to ensure that QS and CQ use caps are not exceeded (see Section IX of this preamble for additional detail on use caps).

An application for CQ must be submitted to NMFS no later than November 1 of the year prior to fishing under the CQ permit to be considered timely. The cooperative's designated representative would be responsible for submitting the application for CQ on

behalf of the cooperative members. If the designated representative for the cooperative were to fail to submit a timely application for CQ, NMFS would not issue CQ to the members of the cooperative for that fishing year. This requirement would require all participants in the Program to organize as a cooperative prior to the November 1 deadline each year and submit a complete application to avoid delay of CQ issuance.

The Applications for CQ would be available on the NMFS Alaska Region website and would be able to be submitted electronically through eFish or the NMFS Alaska Region website. The information that would be required in the application is detailed in the proposed regulatory text at § 679.131. The following list summarizes the information that would be required:

- PCTC Program LLP license identification numbers;
- Processor-held PCTC Program processor QS permit number(s) and name of the processor that holds that each QS permit;
- PCTC Program QS ownership documentation;
- PCTC Program cooperative business address or identifier identification;
- Members of the PCTC Program cooperative and the associated processor;
- Trawl vessel identification, including the name(s) and USCG documentation number of vessel(s) eligible to harvest the CQ issued to the PCTC Program cooperative;
- Designated representative and cooperative members' signatures and certification; and
- Authorization for the designated representative to act on behalf of the cooperative to complete the application.

C. Issuing PCTC CQ

NMFS would review the CQ applications for accurate information, use caps, and payment of any fees, including cost recovery. If approved, NMFS would issue a CQ

permit to the cooperatives. Permits would not be issued until the annual harvest specifications are recommended by the Council for the upcoming year. Permits would generally be issued in early January for the upcoming year. The CQ permit would list the metric tons of Pacific cod by A and B season that the cooperative may harvest, the metric tons of apportioned halibut PSC, and the number of each species of crab PSC that the cooperative may use during the fishing year. The following is a brief description of the process NMFS would use for calculating the amount of CQ issued to a cooperative.

CQ would be issued for A and B seasons separately, with total CQ issued to all cooperatives in each season equal to the DFA. The remaining TAC for the trawl CV sector would be the ICA for Pacific cod caught as bycatch in other fisheries, such as pollock. The DFA would be further subdivided into 77.5 percent for the harvester QS pool and 22.5 percent for the processor QS pool. These two QS pools would be converted into CQ and issued as CQ to cooperatives.

D. Issuing PSC with CQ

The proposed Program would authorize NMFS to issue halibut and crab PSC to each cooperative based on the proportion of Pacific cod QS, but NMFS would monitor PSC use at the sector level. PSC used by PCTC cooperative vessels would be deducted from the PCTC PSC limits when they are directed fishing for BSAI Pacific cod during the A and B seasons.

E. Processors in Cooperatives

A person holding a PCTC Program processor QS permit would be required to associate with a cooperative to realize the economic benefits associated with their QS. This creates an economic incentive for the processors that hold QS to either associate with a cooperative on an annual basis or sell their permit to a processor that would associate with a cooperative. The CQ derived from processor-held QS that is not associated with a specific cooperative would be distributed among all the cooperatives

that form in a given year in the same proportion as the CQ assigned to each cooperative.

A cooperative may associate with a processor that does not hold PCTC QS.

A cooperative cannot designate CQ derived from processor-held QS to a vessel owned by that processor in a greater amount than the LLP license associated with the vessel would have brought into the cooperative absent any processor-held QS. This provision is intended to ensure that processor-held CQ is not utilized to primarily benefit vessels in the cooperative that are owned by the processor. The cooperative would monitor this provision and include reporting on harvest of CQ derived from processor-held QS in the PCTC Program cooperative annual report.

F. CQ Transfers

Under this Program, a cooperative could transfer all or part of its CQ to another cooperative for harvest subject to the limitations imposed by the ownership and use caps described in Section VII of this preamble and the proposed regulations. Transfer provisions would provide flexibility for cooperatives to trade Pacific cod for harvest or PSC to support the PCTC program cooperative fishing when it cannot be avoided. The ability to trade PSC allows cooperatives to account for unforeseen circumstances, but the incentive to avoid hitting a cooperative PSC limit remains because of the cost of acquiring PSC from another cooperative.

To effectuate an inter-cooperative transfer, a designated representative of each cooperative would need to agree to and complete a CQ transfer application, which would be available on eFish or on the NMFS Alaska Region website. A transfer of CQ would not be effective until approved by NMFS. If the cooperative attempting to acquire CQ has reached any relevant use caps, NMFS would deny the transfer application.

G. Cooperative Reports

Under the PCTC Program, cooperatives would be asked to provide voluntary annual reports to the Council. Consistent with other cooperative programs developed by

the Council, these reports would include specific information on the structure, function, and operation of the cooperatives.

Each year, the Council would receive reports outlining the cooperatives' performance at one of its regularly scheduled meetings. These reports would be used by the Council to ensure the program is functioning as intended and to solicit timely information on issues that may need to be addressed by the Council. The Council requested that each cooperative report include information on CQ leasing activities and any penalties issued, harvest of CQ resulting from processor-held QS, cooperative membership, cooperative management, and performance (including implementation of the AI set-aside when in effect).

V. AI Community Protections

The Council and NMFS have long supported the development of a local CV fleet in remote AI communities, and a variety of programs have been implemented to encourage economic opportunities for local CVs and processing operations. Some of these programs include: the allocation of the AI pollock TAC to the Aleut Corporation, an Alaska Native tribal organization that represents specific community interests in Adak (70 FR 9856; March 1, 2005); allocations of Western AI golden king crab to the Adak Community Development Corporation under the BSAI Crab Rationalization Program (70 FR 10174; March 2, 2005); and the establishment of a Community Quota Entity Program in the AI that provides additional fishing opportunities for residents of fishery dependent communities in the AI and sustains participation in the halibut and sablefish IFQ fisheries (79 FR 8870; February, 14, 2014). Adak, the AI community with the most historical participation in the Pacific cod fishery, also acts as a port of embarkation and disembarkation for personnel on board C/Ps and CVs harvesting groundfish in the AI.

The Council previously sought to ensure the continued participation of remote AI fishing communities in the Pacific cod fishery through BSAI Amendment 113, which

was recommended by the Council and implemented by NMFS at the start of the 2017 fishing year (81 FR 84434, November 23, 2016). Amendment 113 set aside a portion of the BSAI Pacific cod TAC for harvest by catcher vessels delivering their catch to Aleutian Islands shoreplants. However, the U.S. District Court for the District of Columbia vacated the rule implementing Amendment 113, finding the record for that action failed to demonstrate consistency with the Magnuson-Stevens Act's National Standards (*Groundfish Forum v. Ross*, 375 F.Supp.3d 72 (D.D.C. 2019)). As a result of this court decision, the regulations implementing Amendment 113 are no longer in effect.

Shortly after the vacatur of Amendment 113, the Council initiated action to rationalize the BSAI trawl CV Pacific cod fisheries and included options to meet the objective of supporting sustained participation by AI communities in the Pacific cod trawl CV fishery. Under the PCTC Program, cooperatives would be required to collectively set-aside 12 percent of the A season CQ for delivery to an Aleutian Island shoreplant (AI CQ set-aside) during years in which an AI community representative notifies NMFS of their intent to process Pacific cod.

This provision is different from the set-aside implemented under Amendment 113 but would achieve a similar goal. NMFS proposes new regulations to implement the PCTC Program AI community measures, which will include some provisions that are similar or identical to the vacated regulations that implemented Amendment 113. For example, Amendment 113 defined an "Aleutian Island shoreplant" to mean a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska (State), and this same definition will apply under the PCTC Program. Defining Aleutian Island shoreplant is necessary because the existing term "shoreside processor" in § 679.2 can include processing vessels that are moored or otherwise fixed in a location (*i.e.*, stationary floating processors), but not necessarily located on land. When Amendment 113 was vacated, the associated regulations lost their legal effect, though

they were not removed from the Code of Federal Regulations (CFR). Under this proposed rule, NMFS proposes to remove regulatory provisions at § 679.20 that implemented the vacated Amendment 113 and add provisions applicable to the PCTC Program.

Despite having a small local CV fleet, Adak has a substantial degree of historical engagement in the AI Pacific cod fishery. Adak is home to a large shoreplant, and, when operational, the Adak shoreplant primarily receives and processes Pacific cod harvested in the A season. In some years, the facility has not received any deliveries of groundfish, crab, or halibut due to a variety of operational and logistical challenges, as well as changes in fishery management. Section 2.8.6 of the Analysis provides additional detail on Adak shoreplant processing operations (see **ADDRESSES**).

A. Rationale for Establishing an AI CQ Set-Aside

This proposed rule is intended to provide benefits to harvesters delivering to an Aleutian Island shoreplant, the shoreplants, and the communities where those shoreplants are located. This objective is consistent with long-standing policies recommended by the Council and regulations established by NMFS to provide harvesting and processing opportunities for communities in the AI. The Council determined and NMFS agrees that a harvest set-aside is needed for several reasons. First, the entire BSAI trawl CV Pacific cod apportionment could be harvested in the BS which would mean no cod would be delivered to a community in the AI, jeopardizing the ability of AI communities to continue participating in the fishery. Second, the Council acknowledged that the TAC for AI Pacific cod was significantly lower than predicted in the last few years, meaning that the small vessels operating in and around the AI could have reduced harvest opportunities in any given year. Third, the rationalization programs, and particularly the Amendment 80 Program, allowed an influx of at-sea processing capacity into the AI Pacific cod fishery (until at-sea processing was limited by Amendment 120 to the BSAI FMP), exacerbating the need for Council action to support shoreside delivery of Pacific cod to

AI fishing communities. This proposed rule would strike a balance between supporting fishery-dependent communities and ensuring that the fishery sectors have a meaningful opportunity to fully harvest their allocations by including several measures to prevent AI Pacific cod from going unharvested. This proposed rule would provide benefits and stability to fishery-dependent fishing communities in the AI when their shoreplants are operating and is responsive to lingering effects caused by changes in management regimes such as rationalization programs.

The Council recognized that neither of the existing Aleutian Island shoreplants—in Adak and Atka—have participated in the AI Pacific cod fishery in recent years. However, the Council also recognized that the measures and CQ set-aside in this proposed rule would minimize the risk that AI harvesters, processors, and communities would be excluded from the AI Pacific cod fishery and would maintain opportunities for them to participate.

This proposed rule would revise regulations to provide additional incentives for harvesters to deliver AI Pacific cod to an Aleutian Island shoreplant. The AI Pacific cod TAC is not sufficient to allow all sectors to prosecute the AI Pacific cod fishery at their historical levels. Without the management measures included in this proposed rule, AI harvesters, shoreplants, and fishing communities could be preempted from the fishery by the offshore sector. The CQ set-aside would be especially beneficial to AI communities in low TAC years when harvest could otherwise fully occur in the BS, preventing any cod deliveries in the AI. The Council emphasized that this proposed rule would not affect any sector's BSAI Pacific cod allocation or the CDQ Pacific cod allocation in the AI. Non-CDQ sectors would continue to receive the allocations established under Amendment 85.

B. Establishing a Set-Aside for AI processors

The Council recommended, and NMFS proposes establishing a set-aside provision for AI processors that would require cooperatives to set-aside an amount of annual CQ for delivery to an Aleutian Island shoreplant if the city of Adak or Atka files a notice of intent to process that year. The amount of the AI set-aside would be specified each year during the annual harvest specifications process. The amount of the AI set-aside would be equal to the lesser of either the AI Pacific cod non-CDQ DFA or 12 percent of the combined BSAI PCTC Program A season CQ. The AI Pacific cod non-CDQ DFA is further described below in section V.D of this preamble.

In administering the CQ set-aside, cooperatives would need to ensure that CVs under 60 feet in length assigned to an LLP license with a transferable AI endorsement have an opportunity to harvest at least 10 percent of the set-aside. The AI CQ set-aside would be in effect during the A and B seasons unless the intent to process is withdrawn by the AI community. If the intent to process is withdrawn, any remaining portion of the AI CQ set-aside would be available for cooperatives to harvest and deliver to any processor. Each year, a representative of the cooperatives must submit an inter-cooperative agreement to NMFS that describes (1) how the CQ set-aside would be administered by the cooperatives, (2) how the cooperatives intend to harvest the set-aside, and (3) how cooperatives would ensure that CVs less than 60 feet in length assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to harvest 10 percent of the AI CQ set-aside for delivery to an Aleutian Island shoreplant. All cooperatives would be required to provide the cooperative's plan for coordinating harvest and delivery of the set-aside to an Aleutian Island shoreplant in the annual cooperative application, regardless of whether a cooperative intends to harvest any amount of the CQ set-aside.

The purpose of the inter-cooperative agreement would be to ensure annual coordination between the PCTC Program cooperatives and shoreplants that are operating

in the AI and to guarantee that the AI CQ set-aside is available to be harvested in the AI. This reduces the management burden on NMFS and relies on the cooperatives to organize the annual fishing activity.

The 12 percent CQ set-aside is based on historical use by the Aleutian Island shoreplants. The Council did not recommend an allocation to the Aleutian Island shoreplants based, in part, on concerns about whether the plants would be in operation every year and their ability to lease CQ, which was not the intent of the Council in providing processing opportunities for the AI communities. A specific objective is to provide an opportunity for AI cod harvests to support a shoreplant that could be used in conjunction with other fishery landings and allocations to benefit AI communities. The Council determined that this AI CQ set-aside option best met their objective to support sustained AI community participation in the Pacific cod trawl CV fishery. The performance of this set-aside program will be evaluated in the periodic program reviews.

The Council also noted that Aleutian Island shoreplants have a different history in the fishery than the non-Aleutian Island shoreplants, and, therefore, a different management structure is appropriate. Because there is currently no Aleutian Island shoreplant with an active FPP, no entity in the AI would be eligible for processor-issued QS. Unlike with the BS processors, QS allocations to AI processors would not work well based on the intermittent and impermanent operation of the Aleutian Island shoreplants. For this reason, the PCTC Program would provide benefits to Aleutian Island shoreplants through an AI CQ set-aside rather than by allocating QS to AI processors.

C. Intent to Process and Eligibility for AI Set-Aside

This proposed rule would require annual notification of intent to process PCTC Program Pacific cod in the upcoming fishing year by a representative of the City of Adak or the City of Atka. A signed letter or memorandum would serve as the official notification of intent. This proposed rule would require that the official notification of

intent be submitted to the NMFS Regional Administrator no later than October 15 of the year prior to fishing. Email submission of an electronic copy of the official notification of intent by October 15 would provide NMFS inseason management with the timely information it needs to manage the upcoming fisheries and notify the cooperatives that the AI set-aside is in effect for the upcoming year.

A city's notification of intent to process PCTC Program Pacific cod would be required to contain the following information: date, name of city, a statement of intent to process AI Pacific cod, statement of calendar year during which the city intends to process AI Pacific cod, and the contact information for the city representative where the shoreplant is intending to process AI Pacific cod. If no notice of intent to process is submitted, cooperatives would not be required to set aside CQ for Aleutian Island shoreplant delivery.

On or before November 30, the Regional Administrator would notify the representative of the City of Adak or the City of Atka confirming receipt of their official notification of intent to process PCTC Program Pacific cod. Shortly after receipt of an official notification of intent to process PCTC Program Pacific cod, NMFS would announce through notice in the ***Federal Register*** whether the AI set-aside will be in effect for the upcoming fishing year.

Even if an AI community is uncertain at the time the notice of intent is due as to whether an Aleutian Island shoreplant will be operational, there would be no penalty to the AI community or shoreplant for stating their intention to process but then later withdrawing that notice of intent. An AI city would be allowed to withdraw their notice of intent at any time after submitting it to NMFS.

NMFS would monitor the implementation of the set-aside throughout the A and B seasons. NMFS would consider the number and frequency of deliveries to Aleutian Island shoreside processors as well as the season timing and remaining CQ to be

harvested. As soon as practicable, if the Regional Administrator determines that Aleutian Island shoreplants authorized under the PCTC Program will not process the entire AI set-aside, the Regional Administrator could remove the delivery requirement for some or all of the projected unused AI CQ set-aside. The unused portion of the AI CQ set-aside would be made available to PCTC cooperatives in proportion to the amount of CQ that each PCTC cooperative received in the initial allocation of CQ for that calendar year by inseason notification published in the *Federal Register*.

If Adak and/or Atka withdraws its notice of intent to operate during the A or B season, any remaining portion of the AI CQ set-aside would be released to the cooperatives for delivery to any shoreside processor or an eligible C/P with a Pacific cod mothership endorsement.

D. AI DFA

The Council recommended, and NMFS proposes that the amount of the CQ set-aside for delivery to an Aleutian Island shoreplant would be equal to the lesser of either the AI Pacific cod non-CDQ DFA or 12 percent of the A season CQ and would be in effect during the A and B seasons. The Council and NMFS annually establish separate OFLs, ABCs, and TACs, for the AI and BS subareas; however, the non-CDQ sector allocations (including the PCTC Program allocations) remain BSAI-wide allocations. When this CQ AI set-aside is equal to the AI DFA, directed fishing for Pacific cod in the AI may be conducted only by PCTC Program vessels that deliver their catch of AI Pacific cod to Aleutian Island shoreplants. However, if the AI DFA is greater than the AI CQ set-aside (and thus the set-aside is equal to 12 percent of the A season CQ), the difference between the AI DFA and the AI CQ set-aside may be available for directed fishing by all non-CDQ fishery sectors with sufficient A season allocations and may be processed by any eligible processor.

This proposed rule would require that NMFS annually specify an ICA and a DFA derived from the Aleutian Islands non-CDQ TAC. Each year, during the annual harvest specifications process described at § 679.20(c), NMFS would specify an amount of AI Pacific cod that NMFS estimates will be taken as incidental catch when directed fishing for non-CDQ groundfish other than Pacific cod in the AI subarea. This amount would be the AI ICA and would be deducted from the AI non-CDQ TAC. The amount of the AI non-CDQ TAC remaining after subtraction of the AI ICA would be the AI DFA.

NMFS would specify the AI ICA and DFA so that NMFS could clearly establish amount of AI CQ set-aside. It would also aid the public in knowing how much of the AI non-CDQ TAC is available for directed fishing prior to the start of fishing to aid in the planning of fishery operations.

The amount of the AI ICA may vary from year to year, and in future years, NMFS would specify the AI ICA in the annual harvest specifications based on recent and anticipated incidental catch of AI Pacific cod in other AI non-CDQ directed groundfish fisheries.

VI. BSAI Pacific cod CV C Season Fishery

A. Management of the Limited Access Fishery

As stated above, the PCTC Program would allocate only A and B season trawl CV sector apportionments to cooperatives as CQ. The C season apportionment—which is 15 percent of the total annual allocation to the BSAI Pacific cod trawl CV sector—would remain a limited access fishery open to all trawl CVs with LLP license endorsements to harvest Pacific cod in the BS and/or AI with trawl gear. The C season limited access fishery would be managed as it is under status quo conditions, including management of incidental catches of Pacific cod in other directed fisheries. This means that, as under status quo conditions, any trawl CV with a Pacific cod endorsement and BS and/or AI area endorsements is eligible to fish in the C season until the TAC is reached.

B. ITAC and PSC Assigned to the Limited Access Fishery

Although directed fishing for Pacific cod in the C season (June to November) is an important part of the annual fishing plan for some trawl CVs, most of the trawl CV C season catch is incidental to other directed fishing. In August, before directed fishing opens on September 1 for the hook-and-line and pot sectors, NMFS estimates any BSAI trawl CV C season allocation would be available for reallocation to other sectors. In some years, it is clear that a portion of the trawl CV TAC will be available to reallocate, and NMFS may effectuate a reallocation in late September or October. In other years, it is less clear whether there will be any surplus TAC, and NMFS waits until after directed fishing for pollock and Pacific cod by the trawl CV sector closes. In that circumstance, reallocations would occur in November or December. When the BS and AI Pacific cod TACs are higher, trawl CV C season Pacific cod may go unused and can be reallocated to other sectors. In some years, other trawl CV fisheries may be done for the year by October and would not be considered for Pacific cod reallocations.

To help ensure efficient allocation management, NMFS may rollover any unused portion of a seasonal apportionment from any non-CDQ fishery sector (except the jig sector) to that sector's next season during the current fishing year (§ 679.20(a)(7)(iv)(B) and (C)).

Under the PCTC Program, the cooperatives would be granted harvest privileges in the A and B seasons of the BSAI Pacific cod fishery. Those harvest privileges would alter the reallocation structure from the trawl CV sector prior to the C season since roll-overs of unused PCTC CQ to other sectors would not occur until the close of the annual PCTC fishing year (the end of the B season). This proposed rule would establish a separate C season halibut and crab PSC apportionment of five percent before reducing the A and B season PSC limits as described above.

VII. Ownership and Use Caps

A. LAPPs and Use Caps

Section 303A(c)(5)(D) of the Magnuson-Stevens Act requires the Council to ensure that Program participants do not acquire an excessive share of the total limited access privileges in the program by (1) Establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and (2) Establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges.

The Council considered how the allocation of QS could result in consolidation in the harvesting and processing sectors, and whether consolidation could result in any participant acquiring an excessive share of the limited access privileges. To prevent excessive consolidation and any issues with excessive shares, the Program would implement ownership caps to limit the amount of QS a person could hold and use caps on the amount of CQ they could use. There are four types of ownership or use caps under the PCTC Program that would apply to harvesters and processors.

Ownership and use caps are typically implemented to limit consolidation and prevent a person, vessel, or processing facility from harvesting, processing, or controlling an excessive amount of the LAPP shares. Here, the proposed ownership and use caps would limit consolidation of both harvesters and processors in the BSAI trawl CV sector, and this is described further in section 2.9.8 of the Analysis. In development of previous catch share programs, the Council tried to balance the goals of improving economic efficiency, maintaining employment opportunities for crew, and providing financially affordable access opportunities for new participants.

Individual ownership and use caps for both CVs and processors would be calculated using the “individual and collective rule.” The individual and collective rule means a person is deemed to own or use QS or CQ in the same percentage that person owns or uses the relevant license, permit, or vessel. For example, persons that hold 100

percent of an eligible LLP license or processing permit would be assigned 100 percent of the QS assigned to that LLP license towards their ownership cap. If they hold 50 percent of the license, they are credited with holding 50 percent of the QS assigned to that LLP license. The same logic applies to use caps: if a person owned 50 percent of a trawl CV, they would be credited with using 50 percent of the CQ harvested by that CV in calculating the use caps. If a person owns QS equal to the maximum shares cap, that person would not be allowed to acquire any additional QS. The proposed ownership and use caps of 5 percent for harvesters and 20 percent for processors are well below what the Council would consider an excessive share because such ownership amounts would preserve price competition and would not result in any participant wielding improper market power. Because the proposed program caps fall well short of excessive shares, the Council recommended and NMFS proposes granting legacy exemptions to participants whose initial allocations based on historical participation would otherwise exceed the ownership and use caps. The legacy exemptions are intended to preserve stability in the fishery rather than force longtime participants to divest and reduce their reliance on the fishery. However, legacy exemptions are unique to persons receiving initial allocations and could not be transferred. All future purchasers of QS would be subject to the ownership and use caps described below.

B. QS Ownership Caps

1. Harvester QS ownership cap—5 percent

With the exception of persons qualifying for the proposed legacy exemption, no person would be permitted to individually or collectively own more than 5 percent of the aggregate PCTC Program QS units initially assigned to eligible LLP licenses. The number of PCTC Program QS units would be based on the PCTC Program official record. Section II of this preamble provides a detailed example of how the PCTC Program initial QS pool would be established. Persons over the cap at the time of QS

issuance would be granted legacy exemptions. However, when QS is transferred, the person receiving the transfer would be prohibited from holding or using QS over the 5 percent cap. Processor-issued QS would not count toward this use cap. This QS ownership cap would limit the amount of PCTC QS assigned to an LLP license that could be held or controlled by a single entity.

2. Processor QS ownership cap—20 percent

With the exception of persons qualifying for the proposed legacy exemption, no person would be permitted to individually or collectively own more than 20 percent of the aggregate PCTC QS units initially assigned to PCTC Program QS permits held by eligible processors. This proposed rule defines processor-issued QS caps that limit the percent of that class of shares a person could hold or use. Processor-held QS ownership caps are necessarily higher than harvester-held QS caps because the total number of eligible processors is significantly less than the number of harvesters. This cap would be applied at the aggregate firm level (not the individual facility level). Persons over the cap at the time of QS issuance would be granted non-transferable legacy exemptions. The processor QS ownership cap would limit the amount of processor held PCTC QS that could be held or controlled by a single entity.

C. *Vessel CQ Use Cap—5 percent*

Most of the cooperative programs in the North Pacific include a vessel harvesting or use cap. A vessel use cap restricts the quota that can be consolidated and harvested on one vessel during the year.

The Program would include a 5 percent vessel use cap on PCTC Program harvesting vessels. With the exception of persons qualifying under the proposed legacy exemption, no vessel would be permitted to harvest more than 5 percent of the annual PCTC CQ issued in the fishery. Vessels over the cap at the time of QS issuance would be granted legacy exemptions. The legacy exemption would apply to the vessel designated

on an LLP license that yields more than 5 percent of the annual Pacific cod CQ at the time of initial allocation. This legacy exemption is not transferable if the LLP license is transferred to a new owner. The vessel use cap would limit the amount of PCTC CQ that could be harvested by a single vessel.

D. Processor CQ Use Cap – 20 percent

A processor's CQ use cap would protect against excessive consolidation of processing activity by limiting a person (*i.e.* company or firm) from processing more than 20 percent of the annual PCTC CQ, with the exception of persons qualifying under the proposed legacy exemption. The processor CQ use cap would be calculated based on use of all CQ issued under the PCTC Program and not just QS initially issued to processors. This would ensure that a processing company would be limited to processing a specific percentage of the PCTC Program allocation. If the cap was set at the facility level, as was considered by the Council, there would have been no processing limit if a firm operated enough plants.

Under this proposed rule, no person may process more than 20 percent of the PCTC CQ using the individual and collective rule. A person over the cap at the time of QS issuance would be granted a non-transferable legacy exemption. The processor CQ use cap would limit the amount of PCTC CQ that could be processed by a single person.

E. Transfer Limitations

1. QS Transfer Limitations

Under the PCTC Program, LLP license holders that receive QS may transfer PCTC QS concurrently with the transfer of the LLP license or AI endorsement to which it is attached. Initially-issued QS is attached to LLP licenses and QS is non-severable from the LLP license in most cases. However, for LLP licenses with transferable AI endorsements, QS is instead non-severable from the AI endorsement and would move with the AI endorsement if sold to the holder of another LLP license eligible for the

transferable AI endorsement. Transfer of an LLP license or AI endorsement results in the transfer of any PCTC Program eligibility and QS associated with the LLP license or transferable AI endorsement. NMFS would not approve transfers of LLP licenses or AI endorsements if the transfer would cause a person to exceed any ownership or use caps. If an LLP license holder qualifies for a legacy exemption from the QS ownership or use caps, NMFS would not approve any transfers of QS to that person unless and until that person's holdings of aggregate PCTC QS are reduced to an amount below the cap.

To transfer an LLP license or an AI endorsement with PCTC Program QS, the LLP license holder must fill out an application for the transfer of an LLP groundfish or crab license, or for the transfer of an AI endorsement. In the application, the transferor must specify the amount of QS to be transferred (generally all QS attached to the license) the transferee, and the price for the QS transfer. As stated above, NMFS will consider any ownership or use cap implications in reviewing transfer applications. In addition, the QS price will be used in aggregate during program reviews.

For processor-held QS, the QS also is non-severable from the permit unless the transfer would cause a transferee to exceed any holding or use caps. If a processor qualifies for a legacy exemption from the QS holding or use caps, NMFS would not approve any PCTC Program QS permit transfers to that person unless and until that person's holdings of aggregate PCTC QS are reduced to an amount below the QS use cap. A PCTC QS permit issued with a legacy exemption with an amount of PCTC QS above the QS ownership cap may be transferred, and any QS above the ownership cap would be severed from the PCTC QS permit at the time of transfer. Any PCTC QS severed from a PCTC QS permit at the time of transfer may be transferred to another eligible processor permit or used to create a new PCTC QS permit to be issued to an eligible shoreside processor that holds an FPP. If a processor allows their FPP to expire,

they would no longer be eligible to use their QS, but they could still transfer their QS permit.

To transfer QS held by a processor, the processor must fill out an application to transfer QS. In the application, the transferee must specify the amount of QS to be transferred (generally all QS on the permit), which processors are receiving it, and the price for the QS transfer. NMFS will consider whether a transfer implicates any ownership or use caps in reviewing applications. In addition, the QS price will be used in aggregate during program reviews.

2. CQ Transfer Limitations

In addition to permanent transfers of QS, CQ may also be transferred during the fishing season. Annual CQ and associated PSC are transferable between cooperatives through eFish, which automatically reviews transfers and approves them if they remain below specified use caps. Transfers of CQ would be for a single year's annual allocation. The underlying QS remains with the LLP license.

This proposed rule would allow post-delivery transfers of CQ, but they must be completed prior to August 1, after the close of the B season. The intent of this provision is to improve cooperative flexibility, reduce potential violations from overages, reduce enforcement costs, and allow more complete harvests of each cooperative's allocation. At the end of the fishing season, remaining CQ may be consolidated into fewer cooperatives (and for harvest by fewer vessels) due to the requirement that a vessel may not begin a fishing trip without unharvested CQ. Allocations will likely be consolidated in one or two cooperatives with harvesters in those cooperatives making "sweep up" trips to complete the season's harvests. Although consolidation of allocations in one or two cooperatives may help avoid overages, it is anticipated that unintentional small overages could still occur.

VIII. Additional PCTC Program Provisions

A. Sideboard Limits in the PCTC Program

Sideboard limits are restrictions placed on holders of quota share in rationalized fisheries that prevent them from taking advantage of the benefits of consolidation to expand their operations into other fisheries. PCTC Program sideboard limits would be intended to prevent holders of QS from expanding their fishing effort in GOA fisheries. Sideboard limits would allow cooperative members to catch up to the historical percentage of species they harvested in non-rationalized GOA groundfish fisheries. Sideboard limits are not an allocation. Rather, the sideboard is a limit on the catch of species that are not allocated as QS. The PCTC Program is designed to provide certain economic advantages to participants, which could be used to increase their participation in other fisheries and adversely affect GOA fishery participants by increasing competition in limited access fisheries. PCTC Program participants would not be guaranteed any sideboard limit as an amount of catch but instead could participate in the specified directed fishery until the PCTC program CVs in the aggregate hit the relevant species sideboard limit or TAC is closed to directed fishing, whichever happens first. To limit the participation of PCTC Program QS holders in other fisheries, the Program would add sideboard limits for GOA non-exempt AFA CVs and AFA LLP licenses and restrict vessels that are exempt from GOA sideboard limits from leasing CQ within the cooperative.

The PCTC Program would modify existing GOA sideboard limits and associated GOA halibut PSC limits for non-exempt AFA vessels and LLP license holders, close directed fishing where sideboard limits are too small to support a directed fishery, and require that PCTC Program cooperatives monitor and report on leasing activity for vessels that are not subject to GOA sideboards. Most vessels that are exempt from the GOA sideboard limits would be prohibited from leasing their CQ under the program as a condition of benefitting from that exemption, with one exception: AFA GOA-exempt

CVs, non-AFA CVs, and CVs assigned to under 60' LLP licenses with transferable AI endorsements with less than 300 mt of average annual qualifying catch history would be permitted to lease their CQ.

Existing GOA Sideboard Limits for Non-Exempt AFA CVs and LLP Licenses

In the GOA, AFA CVs are divided into two categories: vessels subject to sideboard limits and vessels exempt from sideboard limits. The limits are currently calculated based on the catch histories of the non-exempt AFA CVs. Specifically, the sideboard ratio is aggregated retained catch for each groundfish species or species group from 1995 through 1997 period relative to the sum of the TACs for the species or species group. Through an inter-cooperative agreement, AFA cooperatives currently divide the sideboard limits among the cooperatives and set penalties for exceeding the limits.

AFA CVs that had a historical dependence on GOA fisheries and limited history in the BSAI pollock fishery benefit from an exemption to the GOA sideboard limits. The Council recommended an exemption to GOA sideboard limits for AFA vessels to be managed by the cooperatives with the understanding that no GOA sideboard-exempt vessel would lease its BS pollock in a year that it exceeds its GOA average harvest level from 1995 through 1997. This exception is implemented through the AFA CV Inter-Cooperative Agreement which binds vessels to this limitation.

The AFA fleet includes two classes of sideboard-exempt CVs: (1) those exempt from sideboard limits in the BSAI Pacific cod fishery, and (2) those exempt from sideboard limits in the GOA groundfish fisheries.

NMFS manages the AFA sideboard limits. The agency makes an initial determination at the beginning of the fishing year regarding the fisheries in which AFA vessels are likely to participate, based on historical participation (sideboard ratios), TACs, PSC limits, and other apportionments and regulations. The sideboard limit to TAC ratio remains the same year-to-year but is applied to the current year's initial total

allowable catch (ITAC) to determine the yearly sideboard limit (see Table 2-121 of the Analysis).

To streamline and simplify NMFS's management of AFA groundfish sideboard limits, regulations currently prohibit directed fishing for numerous BSAI and GOA species with historically small sideboards (84 FR 2723, February 8, 2019); (50 CFR 679.20(d)(1)(iv)(D) and 50 CFR 680.22(e)(1)(i) and (iii) and Tables 54, 55, and 56 to 50 CFR 679). See Section 2.9.4 of the Analysis for the 2021 non-exempt AFA CV groundfish sideboard limits in the GOA and for the non-exempt AFA CVs halibut PSC limits in the GOA (see **ADDRESSES**). Section 2.9.4 provides a list of the GOA groundfish species that are closed to directed fishing by AFA CVs. However, AFA CVs qualified for the CGOA Rockfish Program with Rockfish Program QS would not be restricted by AFA sideboard limits for primary and secondary Rockfish Program species while participating in the Rockfish Program.

The current GOA halibut PSC limit for non-exempt AFA CVs is calculated based on the retained groundfish catch by AFA sideboarded CVs in the shallow-water and deep-water complex from 1995 through 1997 relative to total retained catch in the shallow-water and deep-water complex by all vessels. Under the GOA halibut PSC limits, fisheries in the applicable complex are closed for the remainder of a season once NMFS determines that the PSC limit will be reached. Any unused GOA halibut PSC in one season is added to the next season. Conversely, if a seasonal apportionment of a trawl halibut PSC limit is exceeded, the overage is deducted from the apportionment for the next season during the current fishing year.

Changes to Existing GOA Sideboard Limits

Under the PCTC program, all GOA non-exempt AFA CVs and associated AFA LLP licenses would be sideboarded in aggregate for all GOA groundfish fishing activity and for GOA halibut PSC, except for vessels when participating in the CGOA Rockfish

Program, based on their GOA catch history during the qualifying period. The existing sideboards are applied to non-exempt AFA vessels as defined at § 679.64(b)(2). The PCTC Program would modify the calculation of the existing sideboard limits for these non-exempt AFA CVs, based on the GOA catch history. LLP licenses associated with non-exempt AFA CVs upon implementation of the PCTC Program would also be subject to the revised sideboard limits regardless of which vessel is named on the LLP.

Sideboards are currently calculated for non-exempt AFA CVs based on the ratio of catch to the TAC during the years 1995-1997. The PCTC Program modifies the calculation of the sideboard ratios for non-exempt AFA CVs that would be used in the annual GOA harvest specifications, looking at the ratio of catch to the TAC in the qualifying years of 2009-2019 (as shown in Table 3).

Table 3—GOA groundfish sideboard ratios (aggregate retained catch/TAC) for all non-exempt AFA CVs and LLP licenses based on the PCTC Program qualifying period

Target Species	Apportionments by season/gear	Area/component	Existing Sideboard Ratio	New Sideboard Ratio
Pollock	A Season Jan 20 - May 31	Shumagin (610)	0.6047	0.057
		Chirikof (620)	0.1167	0.064
		Kodiak (630)	0.2028	0.091
	B Season Sep 1 - Nov 1	Shumagin (610)	0.6047	0.057
		Chirikof (620)	0.1167	0.064
		Kodiak (630)	0.2028	0.091
Pacific cod	Annual	WYK (640)	0.3495	0.026
		SEO (650)	0.3495	0.000
	A Season Jan 1 - Jun 10	W	0.1331	0.009
		C	0.0692	0.011
	B Season Sept 1 - Dec 31	W	0.1331	0.009
		C	0.0692	0.011
Shallow-water flatfish	Annual	W	0.0156	0.000
		C	0.0587	0.011
Deep-water flatfish	Annual	C	0.0647	0.002
		E	0.0128	0.000
Rex sole	Annual	C	0.0384	0.014
Arrowtooth flounder	Annual	C	0.028	0.011
Flathead sole	Annual	C	0.0213	0.007
Pacific ocean perch	Annual	E	0.0466	0.001

In addition, the ratio used to apportion GOA halibut PSC limits would be modified and the five seasonal apportionments based on that sideboard ratio would be reduced to a single aggregate amount. Providing an aggregate halibut PSC limit would

provide greater flexibility for the AFA vessels and LLPs to assign halibut PSC limits to those GOA groundfish sideboard fisheries that have the greatest value. Table 4 shows the new aggregate GOA halibut PSC limit ratio based on the catch history during the qualifying period 2009-2019 that would be used instead of the information currently in the GOA harvest specifications table after the PCTC Program is implemented.

Table 4—New GOA Halibut PSC Limit Ratio Aggregated at the Season and Complex Level for All AFA Non-Exempt CVs and Associated LLP Licenses Under the Qualifying Period

GOA Halibut PSC Limit	Qualifying Period (2009-2019)
PSC Limit Ratio	.072

Additionally, the Council recommended and NMFS proposes to close directed fishing to all GOA non-exempt AFA CVs and LLP licenses for the following species categories: Southeast Outside district of the Eastern GOA pollock, Western GOA shallow-water flatfish, Central and Eastern GOA deep-water flatfish, and Eastern GOA Pacific ocean perch. NMFS will no longer publish AFA Program sideboard limits for these specific species or species groups in the *Federal Register* as part of the annual groundfish harvest specifications but instead will specify in regulation that directed fishing for these species is closed to non-exempt AFA CVs.

AFA GOA-exempt CVs, non-AFA CVs, and CVs assigned to under 60 ft LOA LLP licenses with transferable AI endorsements that receive PCTC Program QS would not be permitted to lease the CQ generated by their LLP license as a condition of benefiting from a GOA sideboard exemption. If the GOA-exempt vessel assigned to the LLP license does not fish in any GOA fishery, except the CGOA Rockfish Program, during the calendar year, the BSAI Pacific cod CQ generated by the LLP license can be leased that calendar year. Cooperatives would be required to monitor CQ leasing activity by AFA GOA-exempt CVs, and non-AFA CVs, and CVs assigned to under 60 ft LOA LLP licenses with transferable AI endorsements and implement a penalty structure for

violations. Cooperatives would report leasing activities and penalties issued in the voluntary cooperative annual report and in their annual cooperative application. AFA GOA-exempt CVs, non-AFA CVs, and CVs assigned to under 60 ft LOA LLP licenses with transferable AI endorsements with less than 300 mt of average annual qualifying BSAI Pacific cod history may lease their BSAI Pacific cod CQ and still benefit from the GOA sideboard exemption.

Changes to Existing BSAI Sideboard Limits for AFA CVs

The BSAI Pacific cod and halibut PSC sideboard limits for AFA trawl CVs specified at 679.64(b)(4)(i) and in Table 40 to part 679 would be removed upon implementation of this Program. The BSAI Pacific cod sideboard limit would no longer be necessary because BSAI Pacific cod catch in the A and B seasons would be fully allocated under the PCTC Program. NMFS proposes removing the halibut PSC sideboard limits for AFA trawl CVs because the PCTC Program would establish lower PSC limits for PCTC Program participants. The BSAI crab PSC sideboard limit for AFA trawl CVs specified at § 679.64(b)(4)(i) and Table 41 to part 679 would remain unchanged by this proposed rule. Table 41 also establishes crab PSC sideboard limits for the AFA CV and AFA C/Ps, and the PCTC Program would not change these overall limits.

B. At-Sea Processing Sideboard Limit

The Council recommended and NMFS proposes a sideboard limit on the amount of CQ that could be delivered by trawl CVs to a C/P designated on a groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement. This sideboard limit would be assigned to the LLP license with a BSAI Pacific cod trawl mothership endorsement that authorizes the C/P to act as a mothership in the BSAI Pacific cod fishery. The Council recommended that each eligible C/P acting as a mothership could process up to the higher of (1) 125 percent of the eligible C/P's processing history during the qualifying years (with no drop year) or (2) the history from LLP licenses that are

owned (in excess of 75 percent) directly or indirectly by the owner of a C/P LLP license eligible for the offshore sector of the target non-CDQ BSAI Pacific cod trawl CV fishery (as of December 31, 2019) and not to exceed 125 percent of the eligible CP's processing history. This at-sea processing sideboard limit would be permanently attached to the associated LLP license and would apply to the processing activity of any associated vessel.

The Council recommended and NMFS proposes to establish an at-sea processing sideboard limit greater than the historical average to provide some opportunity for growth relative to the C/Ps historical annual average, though this limit may allow less offshore processing than occurred during some of the qualifying years. The 125 percent limitation was selected as a means to balance the needs of CVs that want to (or in some cases must) deliver offshore, the historical C/P platforms, shoreside processors, and the communities dependent on shoreside landings. The option selected allows two eligible C/Ps acting as a mothership to process up to 125 percent of their individual average processing history over the qualifying period but does not allow the firms to drop a year when calculating the limit. Due to confidentiality constraints, NMFS cannot publicly release the data used to calculate the limits, or the annual limits, that will apply to each of the two qualifying LLP licenses authorizing a C/P to operate as a mothership in this fishery. Because the amount is a limit and not an allocation, the PCTC Program does not require that this amount be delivered to C/Ps, but it provides an upper bound on how much may be delivered.

This is consistent with the Council's intent under BSAI FMP Amendment 120 (84 FR 70064, December 20, 2019), where it restricted the number of C/Ps that are eligible to operate as a mothership receiving and processing Pacific cod from CVs in the BSAI non-CDQ Pacific cod directed fishery using trawl gear. Under Amendment 120, the Council and NMFS issued a BSAI Pacific cod trawl mothership endorsement to two LLP licenses

but did not include a limit on the amount of BSAI Pacific cod that could be processed because it was not thought that any one processor could increase their capacity significantly under the LLP management system. However, under a rationalized, slower paced, cooperative fishing scenario that is proposed under this Program, the Council and NMFS determined it would be possible for continued mothership processing growth beyond historical patterns, so the Council recommended that a processing limit be established for each LLP listed in Table 57 to part 679. For more information on processing limits for the mothership sector, please see section 2.9.5 of the Analysis (see **ADDRESSES**).

NMFS would calculate the at-sea processing sideboard limit, expressed as a percentage of the aggregate PCTC annual CQ that would apply to each LLP license with a BSAI Pacific cod trawl mothership endorsement and notify the LLP holder upon issuance of initial allocations. Each year upon issuance of CQ, this processing sideboard limit would be calculated for each applicable LLP. This proposed rule would not change the regulations pertaining to the transfer of LLP licenses as specified at § 679.4(k)(7) nor the process to change the designated vessel on an LLP as specified at § 679.4(k)(7)(vii). Each LLP subject to this at-sea processing sideboard limit would be prohibited from exceeding the processing limit as specified in proposed regulations below.

Due to confidentiality requirements, the amount of the processing limit would not be made public and the LLP holder would be responsible for coordinating with any PCTC Program cooperative to ensure the applicable processing limit is not exceeded.

To facilitate accurate accounting of PCTC catch delivered to a mothership and assign the catch delivered to a mothership in unsorted codends to the correct management program, NMFS proposes adding a new paragraph to the maximum retainable amount (MRA) regulations at § 679.20. This change will allow NMFS to assign each codend or “haul” delivered to a mothership to the appropriate fishery management program based

on the retained catch composition of the haul. Any unsorted codend delivered to a mothership during the applicable PCTC season that is in the Pacific cod target fishery would be considered PCTC CQ and resulting PSC use will be deducted from the appropriate cooperative CQ and PSC limits. For any haul that is not in the Pacific cod target, the catch of Pacific cod would be deducted from the appropriate seasonal ICA and resulting PSC fishery category as established in the annual harvest specification process.

C. Cost Recovery

The PCTC Program would be a LAPP established under the provisions of Section 303A of the Magnuson-Stevens Act. The Magnuson-Stevens Act requires that NMFS collect fees from limited access privilege holders to cover the actual costs of management, data collection and analysis, and enforcement activities associated with LAPPs. Cost recovery fees may not exceed three percent of the ex-vessel value of the fish harvested under the LAPP. NMFS would assess a fee on the ex-vessel value of PCTC Program Pacific cod harvested by cooperatives in the BSAI. Halibut and crab PSC would not be subject to a cost recovery fee because PSC cannot be retained for sale and, therefore, does not have an ex-vessel value.

Collecting fees for the PCTC Program would require determining CQ ex-vessel value, assessing management costs, billing the appropriate fee to each cooperative, and ensuring that cooperatives comply with the fee collection requirements.

NMFS would rely on the existing BSAI Pacific cod Ex-vessel Volume and Value Report to provide information on the ex-vessel value of Pacific cod for the PCTC Program. Pacific Cod Ex-Vessel Volume and Value reports are a component of existing groundfish cost recovery programs, such as the Amendment 80 Program. A shoreside processor designated on an FPP, or a mothership designated on an FPP, that processes landings of either CDQ Pacific cod or BSAI Pacific cod harvested by a vessel using trawl gear must submit annually to NMFS a complete Pacific Cod Ex-vessel Volume and

Value Report, as described at paragraph § 679.5(u)(1), for each reporting period for which the shoreside processor or mothership receives this Pacific cod. Each shoreside processor that would receive Pacific cod harvested under a PCTC CQ permit is already required to submit this report to NMFS no later than November 10 of each year pursuant to § 679.5(u)(1)(iii). This report would allow NMFS to collect price data from the PCTC Program season which extends from January through June of each year and generate a standard ex-vessel price for Pacific cod and determine the average price paid per pound for all shoreside processors receiving CQ. NMFS publishes the applicable Pacific cod standard ex-vessel prices and fee percentage in the *Federal Register* following the end of the B season fishery in the year the landings were made, which would provide cooperatives with information necessary to assess their fee liability.

NMFS would publish the Pacific cod fee percentage in the *Federal Register* that would determine the total fee, up to three percent of the total ex-vessel value of the fishery, required from all cooperatives based on landings of CQ made in the previous year. The fee percentage is the total percentage of ex-vessel value due for each pound of CQ made by a cooperative during the previous year. The amount due to NMFS is based on the standard ex-vessel value of the CQ debited from all PCTC Program CQ accounts relative to the actual costs directly related to the management, enforcement and data collection of the PCTC Program.

NMFS would determine the fee percentage that applies to landings made in the current calendar year by dividing the total value of Pacific cod for all cooperatives made during the current year by the total actual costs during the previous fiscal year. NMFS would capture the actual cost of managing the fishery through an established accounting system that allows staff to track labor, travel, and procurement. Once the actual costs for the previous fiscal year are identified, that amount is recovered from all CQ holders in the fishery. If a three-percent fee would recover revenues in excess of those needed, the

percentage will be set at less than three percent. The fee percentage could not be set at an amount higher than three percent of ex-vessel value even if the actual costs for the previous year exceeded three percent of the standard ex-vessel value for the PCTC Program CQ landings.

NMFS would inform each cooperative of the fee percentage applied to the current year's landings and the total amount due (fee liability). NMFS advises cooperatives to inform NMFS if their contact information has changed. This fee liability letter would be sent to cooperative representatives after the fee was incurred (typically in the months following). The fee liability letter would be provided before fees are due on August 31 of each year. The letter would include a summary explaining the fee liability determination including the current fee percentage and details of CQ pounds debited from CQ allocations by permit, date, and prices.

NMFS would require that all payments be submitted electronically in U.S. dollars through the NMFS Alaska Region website. Many of the cooperatives are familiar with, and regularly use, electronic submissions of various forms under other catch share programs, such as the AFA Program, and NMFS would extend this common practice to fee submission for the PCTC Program. Instructions for electronic payment would be made available on the payment website and through a fee liability summary letter NMFS would mail to the CQ permit holder.

The cooperative representative would be responsible for paying cost recovery fees. Failure to pay cost recovery fee liabilities on time would result in NMFS not approving a cooperative's application for a CQ permit the following year until full payment of the fee liability is received by NMFS. This is because a CQ permit may not be issued until NMFS receives a complete application for CQ, which would include confirmation of the full payment of any cost recovery fee liability. Communication with NMFS using the contact information provided in the fee liability letter would provide

ample opportunity for CQ permit holders to reconcile accounts. However, if the account is not reconciled and the individual does not pay, NMFS would send an initial administrative decision (IAD) to the CQ permit holder. The IAD would state that the CQ permit holder's estimated fee liability due from the CQ permit holder had not been paid. Any such formal determination may be appealed. The appeals process is described under 50 CFR 679.43. An applicant who appeals an IAD would not receive a new CQ permit until the appeal was resolved in the applicant's favor.

After 30 days, the agency may pursue collection of the unpaid fees if the formal determination is not appealed and the account remains unpaid or under-paid. The Regional Administrator may continue to prohibit issuance of a CQ permit for any subsequent calendar years until NMFS receives the unpaid fees.

The PCTC Program would follow this proposed cost recovery process that builds on existing cost recovery processes in other programs. NMFS would use standard prices derived from volume and value reports, which are submitted in early November of each year, from the calendar year prior to the landings used to calculate the fee percentage. NMFS would begin tracking PCTC Program management costs in the calendar year 2023 once the rule is in effect. PCTC Program landings would be made in the A and B seasons, which extends from January 20 to June 10.

To illustrate this in an example using the year 2025, the PCTC Program fishing year that would have landings subject to cost recovery would end June 10, 2025. NMFS would use standard prices derived from the volume and value report submitted by November 10, 2024 for landings made in 2024. Finally, NMFS would use the management costs from July, 2024 through June, 2025 to calculate the 2025 fee percentage. By no later than July 31, 2025, the Regional Administrator would publish the standard price and fee percentage in a notice in the ***Federal Register*** and send invoices to cooperatives.

D. Monitoring Provisions

The Council recommended and NMFS proposes requirements for observer coverage and other monitoring and enforcement provisions under the PCTC Program to ensure that fleet-wide harvests can be effectively monitored and that catches remain within allocations. These requirements include full observer coverage for CVs harvesting PCTC Program CQ (except for CVs delivering unsorted codends to motherships) and requirements for communications equipment to facilitate observer data entry and electronic transmission to NMFS. These monitoring provisions are designed to maximize the quality of data used to estimate PCTC Program catch and bycatch, including PSC. Delivered catch would be reported electronically by shoreside processors through eLandings. Estimates of at-sea discards and PSC would be derived solely from observer data. All catch would accumulate against cooperative allocations and other applicable limits.

Under the North Pacific Observer Program (Observer Program), all vessels and processors in the groundfish and halibut fisheries off Alaska are placed into one of two categories: (1) The full observer coverage category, where vessels and processors obtain observer coverage by contracting directly with observer providers; and (2) the partial observer coverage category, where NMFS has the flexibility to deploy observers when and where they are needed, as described in the annual deployment plan that is developed by NMFS in consultation with the Council. NMFS funds observer deployment in the partial observer coverage category by assessing a 1.65 percent fee on the ex-vessel value of retained groundfish and halibut from vessels that are not in the full observer coverage category.

The Council recommended and NMFS proposes that all vessels under the PCTC Program would be placed in the full coverage category of the Observer Program. All vessels used to harvest PCTC CQ would be required to carry at least one observer on

board the vessel at all times except for CV deliveries of unsorted codends to a mothership pursuant to the exception specified at § 679.51(a)(2).

The owner of a trawl CV in the full observer coverage category would contract directly with a permitted full coverage observer provider to procure observer services as described at § 679.51(d). The owner of a trawl CV in the full observer coverage category would not be required to log fishing trips in Observer Declare and Deploy System (ODDS) under § 679.51(a)(1), and landings made by a vessel in the full observer coverage category would not be subject to the 1.65 percent partial observer coverage fee under § 679.55.

This action would not modify observer coverage requirements for trawl CVs participating in the BSAI trawl limited access fisheries during the C season. Regulations at Subpart E to part 679 specifying observer coverage requirements would continue to apply. The owner of a trawl CV would continue to be able to request, on an annual basis, that NMFS place the vessel in the full observer coverage category for all directed fishing for groundfish using trawl gear in the BSAI in the following calendar year. Voluntary placement in the full coverage category would apply to all non-PCTC directed fishing for groundfish using trawl gear in the specified calendar year.

Additionally, the Council recommended and NMFS proposes that all vessels used to harvest PCTC CQ would be required to provide equipment and at-sea data transmission capabilities to facilitate electronic transmission of observer data to NMFS. Requirements for non-AFA trawl CVs to install equipment necessary to facilitate at-sea observer data transmission requirements would not be effective until three years after the effective date of the final rule implementing the PCTC Program. This proposed rule also modifies regulations at § 679.51(e)(2)(iii)(A) to explicitly include the electronic transmission of observer data in the requirement for vessel operators to allow an observer

to use the vessel's existing communications equipment for confidential entry, transmission, and receipt of work-related messages.

Under this proposed rule, all vessels participating in the PCTC Program would be required to provide an onboard computer that meets minimum specifications for use by an observer. Currently, NMFS uses and installs custom software (ATLAS) on the vessel's computer, and this software application is used by observers to enter the data they collect. The ATLAS software contains business rules that perform many quality control and data validation checks automatically, which dramatically increases the quality of the preliminary data. After the observer data are entered into the ATLAS software, it is transmitted to NMFS.

At-sea transmission of observer data improves data quality. To accommodate concerns by small vessel operators, the Council determined and NMFS proposes that, for the first three years after implementation, the current at-sea observer data transmission requirements would be maintained, unless the necessary equipment is installed before that time. Public testimony suggests that most of the vessels that do not currently have data transmission capability would realize the benefits from this program and be able to obtain the technology. Though the installation of equipment to facilitate at-sea data transmission on non-AFA vessels would not be required until after the first three years of the Program, this proposed rule clarifies that if the vessel already has equipment capable of facilitating at-sea data transmission, that equipment must be made available to the observer for use in transmitting work-related messages including collected data.

NMFS proposes requiring motherships receiving unsorted codends from a PCTC Program CV to comply with catch monitoring requirements specified at § 679.93(c) for Amendment 80 vessels and C/Ps. These requirements are already applicable to Amendment 80 C/Ps acting as a mothership and would continue to apply when participating vessels act as a mothership to process PCTC Program CQ. This proposed

rule would not alter existing observer coverage requirements for trawl CVs delivering unsorted codends to a mothership in the BSAI. A trawl CV delivering unsorted codends to a mothership is not required to carry an observer because the catch is not brought on board the CV and not available for observer sampling. Rather, the catch is sorted and sampled by observers aboard the mothership.

Participating motherships would be required to have at least two observers aboard the mothership, at least one of whom would be required to be endorsed as a lead level 2 observer. More than two observers would be required to be aboard if the observer workload restriction would otherwise preclude sampling as required. All PCTC Program catch, except halibut sorted on deck by vessels participating in the halibut deck sorting described at § 679.120, would be required to be weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul would be required to be weighed separately and all catch made available for sampling by an observer.

NMFS proposes catch monitoring requirements for shoreside processors receiving deliveries from CVs harvesting PCTC Program Pacific cod. The Council recommended that all shoreside processors receiving deliveries from CVs harvesting PCTC Program Pacific cod would comply with a NMFS certified catch monitoring and control plan (CMCP); however, NMFS has determined that a CMCP is not necessary to ensure the accurate accounting of all PCTC landings. Instead, NMFS proposes that all groundfish landed by CVs described in § 679.51(a)(2) would be required to be sorted, weighed on a scale approved by the State of Alaska as described in § 679.28(c), and be made available for sampling by an observer, NMFS staff, or any individual authorized by NMFS. Any of these persons must be allowed to test any scale used to weigh groundfish to determine its accuracy.

E. PCTC Program Review

Under the Magnuson-Stevens Act, a LAPP program review shall be undertaken five years after implementation, with additional reviews occurring, at a minimum, every seven years thereafter. A formal review of the proposed PCTC Program by the Council would take place five years after the implementation of the program and would help the Council determine if the program is functioning as intended. The review process would allow for a full evaluation of the program's successes or challenges and provide the Council with details on unanticipated consequences. The Council determined that a formal review process was essential to the PCTC Program as a key tool to assess whether the PCTC Program was achieving the goals of the Magnuson-Stevens Act and the problem statement as identified in the Analysis (see **ADDRESSES**). This review and evaluation by the Council would include an assessment of the program objectives. Specifically, the Council would review whether the allocation of Pacific cod is fair and equitable given participation in the fishery, historical investments in and dependence upon the fishery, and employment in the harvesting and processing sectors. The Council would also assess performance of the program based on changes in annual cooperative formation, changes in product value, the number and distribution of processing facilities, and stability or use of annual processor associations with harvesting cooperatives. The focus of these reviews would be the impact of this action on the harvesting and processing sectors, as well as on fishery dependent communities. The Council would also assess whether the needs for management and enforcement, as well as data collection and analysis, are adequately met. Because the Council would undertake this review as part of routine work, NMFS is not proposing regulatory changes to implement this review process.

IX. Examples of Allocations under the PCTC Program

The following section provides an example of QS allocations, annual CQ allocations, and PSC limit calculations under the proposed PCTC Program. For these

examples, NMFS has used the 2022 harvest specifications for groundfish of the BSAI (87 FR 11626, March 2, 2022) to illustrate how annual TAC would correspond to issued QS, how portions of annual TAC would be allocated as CQ, and how annual PSC limits would be established for the cooperatives.

A. PCTC Program QS Pool Example

The first step of PCTC Program implementation would be for NMFS to estimate the QS pools for both harvesters and processors.

Step 1: Determine the total legal landings for PCTC Program harvesters

Using the official record, NMFS would sum the best 10 of 11 years of legal landings for all eligible LLP licenses during the 2009 through 2019 qualifying years for directed harvest of Pacific cod (or best 15 of 16 years from 2004 through 2019 for LLP licenses with transferable AI endorsements). This estimate may be subject to change if the official record is adjusted based on information provided through the QS application process.

Step 2: Determine the total deliveries of legal landings for PCTC Program processors

Using the official record, NMFS would sum the best 10 of 11 years of deliveries of legal landings for all eligible processors during the 2009 through 2019 qualifying years for directed harvest of Pacific cod. This estimate may be subject to change if the official record is adjusted based on information provided through the QS application process.

Step 3: Establish the Initial PCTC Program QS Pools

NMFS would set the initial QS pool for harvesters and processors equal to the sum of legal landings assigned to each LLP license or processor in metric tons as of December 31, 2022, according the process described in Step 1 and Step 2 above. Each metric ton of legal landings in NMFS's official record on this date would yield one QS unit.

This example assumes that all potentially eligible persons applied, NMFS reviewed the applications, no applicant challenged the official record, and NMFS did not amend the official record. Each year, the harvester QS pool would correspond to 77.5 percent of the annual A and B season trawl CV DFA. Processor-held QS would correspond to 22.5 percent of the annual A and B season trawl CV DFA.

Step 4: Assign QS to an LLP License Holder

NMFS would assign QS to an LLP license holder who submits a timely and complete application within 30 days of the effective date of the final rule. Because issued QS would be permanently affixed to the LLP license, except under specific circumstances defined in Section III D, all qualifying LLP licenses would be reissued with PCTC Program QS.

Step 5: Assign QS to a Processor

NMFS would assign QS to a processor who submits a timely and complete application by within 30 days of the effective date of the final rule. The PCTC Program would issue a new PCTC Program QS permit to eligible processors, and QS would be permanently attached to those QS permits, except under specific circumstances defined in Section III D.

B. TAC and CQ Example for the PCTC Program

The annual trawl CV sector allocation is 22.1 percent of the combined BS subarea and AI subarea non-CDQ Pacific cod TAC. Table 1 in Section I of this preamble provides sector allocations for Pacific cod. The 2022 Pacific cod trawl CV sector allocation was 29,655 mt. The sector allocation is further subdivided between the A season (74 percent), B season (11 percent), and C season (15 percent). As stated above, the PCTC Program allocation would be derived from the A and B season apportionment of the annual trawl CV sector allocation. Before allocating A and B season TAC to the PCTC Program as CQ, NMFS would determine an ICA for each season that would be

account for the incidental catch of Pacific cod in other groundfish fisheries. This ICA would be deducted from the A and B season trawl CV sector apportionments, and the remainder would represent the A and B season DFAs that would ultimately be allocated as CQ. For this example, NMFS uses an ICA placeholder amount of 1,000 mt for the A season and 500 mt for the B season. However, these ICAs are only for an example and the ICA may change each year depending on projected incidental catch needs. In 2022, if the PCTC Program were in effect, the DFA for the A and B season—*i.e.* the allocation of Pacific cod to the PCTC Program—would have been 20,945 mt in the A season $((29,655 \times .74) - 1,000)$ and 2,762 mt in the B season $((29,655 \times .11) - 500)$, for a total of 23,707 mt. The C season DFA would have been 4,448 mt $(29,655 \times .15)$; there is no ICA for the C season).

The PCTC Program apportionment would be assigned to PCTC cooperatives as CQ. The Council recommended and NMFS proposes that 77.5 percent of the annual CQ would be issued to cooperatives proportionate to the harvester-held QS and 22.5 percent of the annual PCTC Program CQ would be issued to cooperatives proportionate to the processor-held QS.

Table 5—Final 2022 Sector Allocation and Seasonal Allowances of the BSAI Pacific Cod TAC for the Trawl CV Sector and the PCTC Program

Sector	Season Dates	PCTC Program 2022 TAC Apportionment	77.5 Percent of Annual PCTC CQ Issued to Cooperatives for Harvester-held QS (in mt)	22.5 Percent of Annual CQ Issued to Cooperatives for Processor-held QS (in mt)
Trawl CV sector TAC	-	29,655	-	-
A Season ICA		1,000		
PCTC Program A Season DFA ((TAC x .74) – A season ICA)	January 20 - April 1	20,945	16,232	4,713
B season ICA		500		
PCTC Program B Season DFA ((TAC x .11) – B season ICA)	April 1 - June 10	2,762	2,141	621
Limited Access C Season DFA (TAC x .15)	June 10 - November 1	4,448	-	-

C. Annual CQ issuance example

Per Table 5, in this example the combined A and B season DFA to be issued as CQ totals 23,707 mt. Of that total, 77.5 percent (18,373 mt) would represent CQ derived from QS assigned to LLP licenses (harvester-held QS pool), and 22.5 percent (5,334 mt) would represent CQ derived from QS held by processors (processor-held QS pool). To illustrate how CQ would be issued to cooperatives, assume that there are three groups of LLP licenses that associate with three groups of processors holding PCTC QS to form three cooperatives. The groups of LLP license holders hold 30, 4, and 66 percent of the harvester-held QS pool of 18,373 mt, respectively. The processors hold 8, 41, and 51 percent of the processor-held QS pool of 5,334 mt, respectively. Harvester Group 1 associates with Processor Group 1 to form Cooperative 1, Harvester Group 2 associates

with Processor Group 2 to form Cooperative 2, and Harvester Group 3 associates with Processor Group 3 to form Cooperative 3.

In this example, the cooperatives would be allocated annual totals of CQ as described in the table below (actual CQ permits would specify a separate CQ allocation for A and B seasons; those allocations are combined here for simplicity and to illustrate hypothetical annual totals):

Table 6—Examples of CQ Issuance to Three Hypothetical Cooperatives

	Percent of harvester QS (18,373 mt)	Percent of processor QS (5,334 mt)	2022 CQ derived from QS (in mt)	2022 Percent of PCTC Total CQ
Harvester 1	30%		5,512	
Processor 1		8%	427	
<u>Cooperative 1</u>			5,939	25%
Harvester 2	4%		735	
Processor 2		41%	2,187	
<u>Cooperative 2</u>			2,922	12%
Harvester 3	66%		12,126	
Processor 3		51%	2,720	
<u>Cooperative 3</u>			14,846	63%
Total CQ issued in A and B season	100%	100%	23,707	100%

Classification

Pursuant to Section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Impact Review (RIR)

A Regulatory Impact Review (RIR) was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS is recommending Amendment 122 and this proposed rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis (IRFA) section.

Initial Regulatory Flexibility Analysis (IRFA)

This IRFA was prepared, as required by Section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. An IRFA describes why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

Number and Description of Small Entities Regulated by this Proposed Rule

The alternatives would directly regulate owners and operators of harvesters and processors that participate in the BSAI trawl CV Pacific cod fishery including (1) trawl CVs, (2) shoreside processors, (3) floating processors, (4) trawl C/Ps acting as motherships, and (5) small government jurisdictions in the AI. This action may also impact observer providers that support the BSAI trawl CV Pacific cod fishery, but they would be indirectly impacted. Therefore, observer providers are not considered directly regulated entities in the IRFA prepared for this action.

A small business includes any firm that is independently owned and operated and not dominant in its field of operation. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have less than 11 million dollars in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411). The RFA requires consideration of affiliations between entities for the purpose of assessing whether an entity is classified as small. The AFA pollock cooperatives, which make up a subset of the entities regulated under this proposed rule, are types of affiliation between entities. All of the AFA cooperatives have gross annual revenues that are substantially greater than 11 million dollars. Therefore, NMFS considers members in these cooperatives to be “affiliated” large (non-small) entities for RFA purposes. The eligible AFA entities are large entities based on those affiliations. The remaining 13 trawl CVs would be considered small entities. This count includes five trawl CVs that are greater than 60 ft LOA and eight CVs that are less than 60 ft LOA with a transferable AI endorsement.

Though C/Ps engage in both fish harvesting and fish processing activities, since at least 1993, NMFS Alaska Region has considered C/Ps to be predominantly engaged in fish harvesting rather than fish processing. Under this classification, the threshold of 11 million dollars in annual gross receipts is the appropriate threshold to apply to identify any C/Ps that are small entities. All the C/Ps that are directed regulated by this action do not meet the Small Business Administration (SBA) definition of a small entity due to cooperative affiliation.

Under the SBA’s size standard for “seafood product preparation and packaging” (NAICS code 311710), seafood processors are considered small entities if they are independently owned and operated, not dominant in their field of operation, and have a combined annual employment of fewer than 750 employees. Of the plants that took

deliveries of Pacific cod from 2017 through 2019 that are currently in business, one firm would be considered a small entity.

The RFA defines "small governmental jurisdiction" as the government of a city, county, town, school district or special district with a population of less than 50,000 people. Two small governmental jurisdictions are directly regulated under the proposed action. Adak and Atka would be required to submit a notice of their intent to process to NMFS to receive a portion of the AI CQ set-aside described in Section V of this preamble. The set-aside amount is intended to benefit the AI communities and participation by these communities is voluntary.

Description of Significant Alternatives that Minimize Adverse Impacts on Small Entities

The Council considered an extensive and elaborate suite of alternatives, options, and sub-options as it designed and evaluated a quota share program for the BSAI Pacific cod trawl CV sector, including a "no action" alternative. The RIR presents the complete set of alternatives, in various combinations with the complex suite of elements and options. The Council selected a preferred alternative that includes a suite of elements and options to manage the BSAI trawl CV Pacific cod sector. The alternatives proposed include no action (Alternative 1) and action to implement a cooperative style LAPP for the BSAI Pacific cod trawl CV sector (Alternatives 2a and 2b and Alternative 3, which is the Council's recommended action).

In general, the recommended LAPP includes allocations of QS to groundfish LLP licenses based on the legal landings of targeted BSAI Pacific cod in a Federal fishery during a range of qualifying years included in the options. The recommended action also allocates QS to a processor permit based on processing history of legal landings of BSAI Pacific cod harvested in a Federal fishery and deducted from the BSAI trawl CV sector apportionment during the qualifying years. One alternative considered but removed included gear conversion, which would have authorized BSAI Pacific cod quota

associated with trawl CV LLP licenses to be fished annually by CVs using pot gear. In the end, the Council did not include the gear conversion element in its preferred alternative due to concerns over the possibility of high crab PSC in pot gear for red king crab (Zone 1) and *C. opilio*.

A second option considered but removed was a cooperative formation approach based on existing AFA and non-AFA membership. The AFA vessels and non-AFA vessels would have formed their cooperatives independently of each other. A person owning both an AFA vessel and non-AFA vessel would have been required to join the AFA cooperative for the AFA vessel and the non-AFA cooperative for the non-AFA vessel. Allowing only an AFA and non-AFA cooperative was rejected by the Council after considering the obstacles it would create under the various program elements being considered by the Council and withdrawal of industry support for the option. For example, under the options that would allocate quota to processors, it would create a situation where multiple processors could designate CQ to a cooperative and require that the cooperative negotiate the terms and conditions of the harvest of those Pacific cod. This would have raised antitrust concerns that would need to be carefully navigated. Integrating multiple processors, the potential limitation on competition, and reduced cooperative formation choice were ultimately the issues associated with the two cooperative approach that led to it being removed from consideration. The recommended action allows a cooperative to associate with one processor. This model has been used successfully in the AFA program and CGOA Rockfish Program and reduces antitrust concerns that were raised to the Council under the AFA and non-AFA cooperative structure.

These alternatives constitute the suite of “significant alternatives,” under this proposed action, for purposes of the RFA. Based upon the best available scientific data, and consideration of the objectives of this action, NMFS did not identify alternatives to

the proposed action that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on small entities. After public process, the Council concluded that the proposed PCTC Program would best accomplish the stated objectives articulated in the problem statement and applicable statutes, and minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Duplicate, Overlapping, or Conflicting Federal Rules

No Federal rules that may duplicate, overlap, or conflict with this proposed action have been identified.

Recordkeeping, Reporting, and Other Compliance Requirements

This action would implement new recordkeeping, reporting, and compliance requirements and revise existing requirements. These requirements are necessary for the management and monitoring of the PCTC Program.

All PCTC program participants would be required to provide additional information to NMFS for management purposes. Each harvester would be required to track harvests to avoid exceeding their allocation. As in other North Pacific rationalized fisheries, processors would provide catch recording data to managers to monitor harvest of allocations. Processors would be required to record deliveries and processing activities to aid in the Program administration.

To participate in the Program, persons are required to complete application forms, transfer forms, reporting requirements, and monitoring requirements. These requirements impose costs on small entities in gathering the required information and completing the information collections.

NMFS has estimated the costs of complying with the requirements based on information such as the burden hours per response, number of responses per year, and

wage rate estimates from industry or the Bureau of Labor Statistics. Persons are required to complete many of the requirements at the start of the Program, such as the application to participate in the Program. Persons are required to complete some requirements every year, such as the cooperative application. Additionally, reporting for purposes of catch accounting or transfer of CQ among cooperatives is completed more frequently. The impacts of these changes are described in more detail in Sections 2.10.7 and 2.10.12 of the Analysis prepared for this proposed rule (see **ADDRESSES**).

New requirements for the PCTC Program include the Application for PCTC Program QS, the 90-day transfer window, the Application for PCTC Program CQ, the Application for Transfer of PCTC Program QS for Processors, the AI notice of intent to process, inter-cooperative transfers, the appeals process, and cost recovery fee.

The initial allocation process requires all eligible harvesters and processors who want to participate in the PCTC Program to submit an Application for PCTC Program QS to receive QS. This application is needed to determine the allocation of QS to eligible LLP licenses and to eligible processors. For CVs, NMFS will use the Catch Accounting System data to determine how much Pacific cod was harvested using the LLP license authorizing a CV and ask the current LLP license holder to verify the catch estimate. For processors NMFS will use the Catch Accounting System data to determine the amount of qualifying Pacific cod delivered to the processor, and the processors will verify the estimates. That information will also be used to determine whether the QS holder complies with the ownership and use cap limitations imposed under the program. Allowing persons to harvest a given percentage of the fishery is anticipated to allow harvesters to avoid fishing in bad weather conditions, improving safety of the fleet. The fleet is also expected to be able to deliver a consistently higher quality product. Quality improvements are expected to result from shorter times between harvest and processing and less damage to the fish in the holds by not fishing in bad weather.

In addition, the initial allocation process has a 90-day transfer window to allow persons to transfer QS between non-exempt AFA LLP licenses under certain conditions to honor private contracts and agreements associated with harvest of the AFA Pacific cod sideboard limits. This transfer window would allow persons to resolve any disputes or request QS transfers between LLP licenses. After the 90-day window for these transfers has closed, QS could not be separated from an LLP license or transferable AI endorsement unless necessary to prevent exceedances of the ownership or use caps, or if required by an operation of law.

The PCTC Program would include a standardized appeals process. The appeals process provides participants the required opportunity to dispute the catch and processing history records in the Catch Accounting System that are used to determine a person's allocation of QS. The appeals process is in addition to the 90-day transfer window discussed above and open to all participants, not just non-exempt AFA vessels.

Each year the cooperative manager would be required to submit an Application for PCTC Program CQ that identifies the LLP licenses and processor QS permits named to the cooperative and the vessels allowed to harvest the CQ. This application would include the inter-cooperative agreement that defines how the AI CQ set-aside will be harvested during years it is in effect. The Council requests that cooperatives submit an annual cooperative report to the Council.

The Application of Transfer of PCTC Program QS for Processors would be required for eligible processors to transfer their QS to other processors. Processor QS assigned to a processor permit established under the PCTC program may be transferred through the eFish system with approval by NMFS.

The PCTC program requires the cooperatives to set aside 12.5 percent of their allocation for delivery to Aleutian Island shoreplants in years that a representative from the City of Adak or the City of Atka files a valid intent to process with NMFS. The intent

to process is necessary for NMFS and the cooperatives to know whether the regulations established for the set-aside are in effect during the A and B seasons. If an intent to process is filed, it also triggers additional reporting in the cooperative report to the Council.

The PCTC Program is a LAPP and therefore NMFS is required to collect fees for the PCTC Program under sections 303A and 304(d)(2) of the Magnuson-Stevens Act. Section 304(d)(2) of the Magnuson-Stevens Act limits the cost recovery fee so that it may not exceed 3 percent of the ex-vessel value of the Pacific cod harvested under the PCTC Program. Ex-vessel volume and value reports currently being used to establish an average annual price for BSAI trawl caught Pacific cod would be used to establish the standard price and no additional collection of price data would be necessary. NMFS uses this information to meet the required provisions in sections 303A and 304(d) of the Magnuson-Stevens Act that require NMFS to collect these fees associated with recoverable costs.

In addition to the new requirements, the PCTC Program would revise existing requirements.

If LLP license holders want to transfer their LLP license or transferable AI endorsement and the associated PCTC Program QS, they must fill out an Application to Transfer a Groundfish or Crab LLP License. This form would be revised to collect information on the PCTC QS transaction, including QS prices, amount transferred, and whether there are multiple transferees in the event ownership caps would otherwise be exceeded. Information would be added to the LLP license transfer form identifying how PCTC QS would be distributed to the other LLP licenses if the original holder of the LLP license was assigned QS that was over the 5 percent ownership cap and qualified for the legacy exemption.

The PCTC Program would require updating ATLAS data transmission to enable the timely electronic entry, archival, and transmission of observer data for at-sea operations and shorebased processing plants.

This rule would require that all vessels submit logbooks when fishing in the PCTC program. All CVs greater than or equal to 60 ft LOA currently submit logbooks. Some CVs that may participate in the AI Pacific cod fishery are less than 60 ft LOA and may already file logbooks when fishing for Pacific cod. Many already complete logbooks based on their participation in other programs. However, a small number of CVs less than 60 ft LOA that do not currently submit a logbook would likely need to begin submitting a logbook if they choose to participate in the PCTC Program.

Paperwork Reduction Act

This proposed rule contains collection of information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This proposed rule would add new collections of information for the PCTC Program under a new OMB control number and revise requirements for collections of information under existing OMB Control Numbers 0648-0213 (Alaska Region Logbook and Activity Family of Forms); -0318 (North Pacific Observer Program); -0334 (Alaska License Limitation Program for Groundfish, Crab, and Scallops); -0711 (Alaska Cost Recovery and Fee Programs); -0678 (North Pacific Fishery Management Council Cooperative Annual Reports); and -0515 (Alaska Interagency Electronic Reporting System). However, because the collection of information authorized by OMB Control Number 0648-0515 is concurrently being revised in a separate action, the revisions to that collection of information in this proposed rule will be assigned a temporary control number that will later be merged into 0648-0515. The existing collections of information under OMB control numbers 0648-0330 (NMFS Alaska Region Scale & Catch Weighing Requirements) and 0648-0445 (NMFS Alaska Region Vessel Monitoring System (VMS))

Program) will also provide information needed to implement the PCTC Program and will continue to apply. This proposed rule would not make any changes to these two collections of information. The public reporting burden estimates provided below for these collections of information include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Control Number 0648-NEW

This proposed rule would create a new collection of information needed to implement PCTC Program. This new collection of information would authorize applications and processes used by the PCTC Program cooperatives, processors, LLP license holders, and community representatives to apply for permits, to transfer cooperative quota and quota share, to manage fishing and processor activity, and to appeal agency decisions. This new collection is necessary for NMFS to implement, monitor, and enforce the PCTC Program. The data would be used to ensure that program participants adhere to all harvesting, processing, ownership, and use limits. More information on these new requirements is provided in the Classification section of this proposed rule under the heading “Recordkeeping, Reporting, and Other Compliance Requirements.”

The public reporting burden per individual response is estimated to average 2 hours for the Application for Pacific Cod Trawl Cooperative Program Quota Share, 2 hours for the Application for Pacific Cod Trawl Cooperative Program Cooperative Quota, 2 hours for the Application for Transfer of Pacific Cod Trawl Cooperative Program Quota Share for Processors, 10 minutes for the Application for Inter-Cooperative Transfer of Cooperative Quota, 30 minutes for the notification of intent to process Aleutian Islands Pacific cod, 2 hours for the 90-day transfer window for non-exempt AFA LLP license holders, and 4 hours for appeals.

OMB Control Number 0648-0213

This proposed rule would revise the existing requirements for the collection of information 0648-0213 related to logbooks because CVs participating in the PCTC Program would be required to submit a CV trawl gear daily fishing logbook. Some CVs less than 60 ft LOA that do not currently submit this logbook would need to begin doing so to participate in the PCTC Program. The revision to this collection of information adds the CVs less than 60 ft LOA that would need to start using the CV trawl gear daily fishing logbook as new respondents. CVs participating in the PCTC Program would have the option of using either the paper logbook approved under this collection or the electronic option, which is approved under OMB Control Number 0648-0515. The PCTC Program does not change the information collected by this logbook. This rule would require C/Ps and shoreside processors authorized as processors in the PCTC Program to submit a product transfer report; however, no changes would be needed to the respondents or responses for this report because all expected respondents are currently submitting it. The public reporting burden per individual response is estimated to average 18 minutes for the Catcher Vessel Trawl Daily Fishing Log and 20 minutes for the Product Transfer Report.

OMB Control Number 0648-0318

This proposed rule would revise the existing requirements for the collection of information 0648-0318 related to the North Pacific Observer Program because all vessels participating in the PCTC program would be required to have a computer onboard and use ATLAS to submit observer data to NMFS. This would increase the number of vessels that need to provide observers access to a computer with ATLAS installed. PCTC Program participants would have up to three years to install ATLAS. Most vessels comply with this requirement by allowing NMFS to install ATLAS on an existing computer on the vessel. Many, if not all, of the vessels that would need to install ATLAS

already have a computer that meets the minimum requirements, and they would only incur costs if they choose to purchase an additional computer. Estimated costs to purchase and install the data transmission system vary from about \$5,000 to \$37,000, depending on what a vessel needs to install. This rule also revises the existing requirements in this collection because catcher vessels that choose to participate in the PCTC Program would be required to be in the full observer coverage category instead of the partial observer coverage category. These catcher vessels would no longer be required to use ODDS to log fishing trips; therefore, this would decrease the number of respondents that log trips in ODDS. The public reporting burden per individual response is estimated to average 15 minutes to log a trip in ODDS.

OMB Control Number 0648-0334

This proposed rule would revise the existing requirements for the collection of information 0648-0334 related to the LLP license and the transferable AI endorsement to include PCTC Program QS information on the groundfish/crab LLP license transfer application form. Subject to public comment, no change is made to the burden because the estimate allows for differences in the time needed to complete and submit the form. The public reporting burden per individual response is estimated to average 1 hour for the Application for Transfer LLP Groundfish/Crab License.

OMB Control Number 0648-TEMPORARY

This proposed rule would revise the collection of information under OMB Control Number 0648-0515 associated with electronic reporting. However, due to multiple concurrent actions for that collection, the collection-of-information requirements will be assigned a temporary control number that will later be merged into OMB Control Number 0648-0515.

PCTC Program participants would need to use eLandings to submit landings and production information, which is approved under control number OMB 0648-0515. CVs

participating in the PCTC Program would be required to submit a CV trawl gear daily fishing logbook and may use either the electronic logbook approved under OMB Control Number 0648-0515 or the paper logbook approved under OMB Control Number 0648-0213. CVs greater than 60 ft LOA are already required to maintain logbooks but this would be a new requirement for CVs less than 60 ft LOA. Some CVs less than 60 ft LOA that do not current submit the logbook would need to begin doing so. The temporary control number would cover the revisions necessary to -0515 for the CVs that choose to submit electronic logbooks. The PCTC Program does not change the information collected by this logbook but does increase the number of participants required to submit it. The public reporting burden per individual response is estimated to average 15 minutes for the CV electronic logbook.

OMB Control Number 0648-0678

This rule would revise the existing collection of information under 0648-0678 to because the Council requests PCTC Program cooperatives submit a voluntary annual cooperative report to the Council. This revision would add the PCTC Program cooperatives as new respondents that will submit an annual cooperative report. The public reporting burden per individual response is estimated to average 18 hours for the PCTC Program annual report.

OMB Control Number 0648-0711

This proposed rule would revise the existing requirements for the collection of information 0648-0711 related to cost recovery because the PCTC Program is a LAPP that is subject to a cost recovery fee under MSA 303A. This revision adds the PCTC Program cooperatives as new respondents that will submit a cost recovery fee to NMFS. The rule would require PCTC processors to submit an annual Pacific Cod Ex-vessel Volume and Value Report; however, this would not change the respondents or responses for this report because all expected respondents are currently submitting it. The public

reporting burden per individual response is estimated to average 1 minute for the PCTC cost recovery fee and 1 minute for the Pacific Cod Ex-vessel Volume and Value Report.

Public Comments

Public comment is sought regarding: whether these proposed information collections are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information to NMFS Alaska Region (see **ADDRESSES**) or at www.reginfo.gov/public/do/PRAMain.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 19, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF
ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

2. Amend § 679.2 by:

- a. Removing the definitions of “Affiliation for the purpose of defining AFA and the Rockfish Program”;
- b. Adding the definitions of “Affiliation for the purpose of defining AFA, Rockfish Program, and PCTC Program”;
- c. Republishing the definition of “Aleutian Islands shoreplant”;
- d. Revising the definitions of “Cooperative quota” and “CQ Permit”; and
- e. Adding in alphabetical order the definitions of “NMFS Alaska Region Website,” “Pacific Cod Trawl Cooperative (PCTC) Program,” “PCTC Program cooperative,” “PCTC Program CQ,” “PCTC Program harvester QS pool,” “PCTC Program official record,” “PCTC Program participants,” “PCTC Program processor QS pool,” “PCTC Program QS unit,” and “PCTC Program quota share (QS)”.

The additions and revisions read as follows:

§ 679.2 Definitions.

* * * * *

Affiliation for the purpose of defining AFA, Rockfish Program, and PCTC

Program means a relationship between two or more individuals, corporations, or other business concerns, except CDQ groups, in which one concern directly or indirectly owns

a 10 percent or greater interest in another, exerts control over another, or has the power to exert control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts control over both, or has the power to exert control over both.

(1) *What is 10 percent or greater ownership?* For the purpose of determining affiliation, 10 percent or greater ownership is deemed to exist if an individual, corporation, or other business concern directly or indirectly owns 10 percent or greater interest in a second corporation or other business concern.

(2) *What is an indirect interest?* An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *What is control?* For the purpose of determining affiliation, control is deemed to exist if an individual, corporation, or other business concern has any of the following relationships or forms of control over another individual, corporation, or other business concern:

(i) Controls 10 percent or more of the voting stock of another corporation or business concern;

(ii) Has the authority to direct the business of the entity that owns the fishing vessel or processor. The authority to direct the business of the entity does not include the right to simply participate in the direction of the business activities of an entity that owns a fishing vessel or processor;

(iii) Has the authority in the ordinary course of business to limit the actions of or to replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of an entity that holds 10 percent or greater interest in a fishing vessel or processor. Standard rights of minority

shareholders to restrict the actions of the entity are not included in this definition of control provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all the assets, to enter into a different business, to contract with the major investors or their affiliates, or to guarantee the obligations of majority investors or their affiliates;

(iv) Has the authority to direct the transfer, operation, or manning of a fishing vessel or processor. The authority to direct the transfer, operation, or manning of a vessel or processor does not include the right to simply participate in such activities;

(v) Has the authority to control the management of or to be a controlling factor in the entity that holds 10 percent or greater interest in a fishing vessel or processor;

(vi) Absorbs all the costs and normal business risks associated with ownership and operation of a fishing vessel or processor;

(vii) Has the responsibility to procure insurance on the fishing vessel or processor, or assumes any liability in excess of insurance coverage;

(viii) Has the authority to control a fishery cooperative through 10 percent or greater ownership or control over a majority of the vessels in the cooperative, has the authority to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or has the authority to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instance, all members of the cooperative are considered affiliates of the individual, corporation, or other business concern that exerts control over the cooperative; or

(ix) Has the ability through any other means whatsoever to control the entity that holds 10 percent or greater interest in a fishing vessel or processor.

* * * * *

Aleutian Islands shoreplant means a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska.

* * * * *

Cooperative quota (CQ):

(1) *For purposes of the Amendment 80 Program* means:

(i) The annual catch limit of an Amendment 80 species that may be caught by an Amendment 80 cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by an Amendment 80 cooperative while fishing under a CQ permit.

(2) *For purposes of the Rockfish Program* means:

(i) The annual catch limit of a rockfish primary species or rockfish secondary species that may be harvested by a rockfish cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut PSC that may be used by a rockfish cooperative in the Central GOA while fishing under a CQ permit (see rockfish halibut PSC in this section).

(3) *For purposes of the PCTC Program* means:

(i) The annual catch limit of Pacific cod that may be caught by a PCTC Program cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by a PCTC Program cooperative while fishing under a CQ permit.

* * * * *

CQ permit means a permit issued to an Amendment 80 cooperative under § 679.4(o)(2), a rockfish cooperative under § 679.4(n)(1), or a PCTC Program cooperative under § 679.131(a).

* * * * *

NMFS Alaska Region Website means

<https://www.fisheries.noaa.gov/region/alaska>.

* * * * *

Pacific Cod Trawl Cooperative (PCTC) Program means the Pacific Cod Trawl Cooperative Program as implemented under subpart L of this part.

* * * * *

PCTC Program cooperative means a group of eligible Pacific cod harvesters who have chosen to form a cooperative under the requirements in § 679.132 in order to combine and harvest fish collectively under a CQ permit issued by NMFS.

PCTC Program CQ (See CQ)

PCTC Program harvester QS pool means the sum of Pacific cod QS units assigned to LLP licenses established for the PCTC Program fishery based on the PCTC Program official record.

PCTC Program official record means information used by NMFS necessary to determine eligibility to participate in the PCTC Program and assign specific harvest privileges or limits to PCTC Program participants based on Pacific cod legal landings as defined at § 679.130.

PCTC Program participants means those PCTC Program eligible harvesters and eligible processors who receive Pacific cod QS.

PCTC Program processor QS pool means the sum of Pacific cod QS units assigned to processor permits issued under the PCTC Program based on the PCTC Program official record.

PCTC Program QS unit means a single share of the PCTC Program QS pool based on Pacific cod legal landings.

PCTC Program quota share (QS) means QS units issued by NMFS expressed in metric tons, derived from the Pacific cod legal landings assigned to an LLP license or PCTC Program QS permit held by a processor and used as the basis for the issuance of annual CQ.

* * * * *

3. In § 679.4, add paragraphs (a)(1)(xvi), (k)(16) and paragraph (q) to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see . ..
* * * * *		
(xvi) PCTC Program:		
(A) PCTC Program QS permit (for processors)	10 Years	Paragraph (q) of this section
(B) PCTC Program CQ permit	Until expiration date shown on permit	Paragraph (q) of this section

* * * * *

(k) * * *

(16) *PCTC Program*. In addition to other requirements of this part, an LLP license holder must have PCTC Program QS assigned to their groundfish LLP license to join a PCTC Program cooperative to harvest Pacific cod.

* * * * *

(q) *PCTC Program Permits*.

(1) *PCTC Program Cooperative Quota Permits*. (i) A CQ permit is issued annually to a PCTC Program cooperative if the members of that cooperative have submitted a complete and timely application for CQ as described in § 679.131 that is approved by the Regional Administrator. A CQ permit authorizes a PCTC Program

cooperative to participate in the PCTC Program. The CQ permit will indicate the amount of Pacific cod that may be harvested by the PCTC Program cooperative, and the amount of halibut PSC and crab PSC that may be used by the PCTC Program cooperative. The CQ permit will list the members of the PCTC Program cooperative, the trawl catcher vessels that are authorized to fish under the CQ permit for that cooperative, and the PCTC Program processor(s) with whom that cooperative is associated.

(ii) A CQ permit is valid only until the end of the BSAI Pacific cod B season for the year in which the CQ permit is issued;

(iii) A legible copy of a valid CQ permit must be carried on board the vessel(s) used by the PCTC Program cooperative.

(2) PCTC Program Quota Share Permits for Processors.

(i) NMFS will issue PCTC Program QS permits to eligible processors if the owner(s) submits to the Regional Administrator a completed application for PCTC Program QS as described in § 679.130 that is subsequently approved.

(ii) A processor may associate the QS assigned to the PCTC Program QS permit to a PCTC Program cooperative as described in § 679.131.

* * * * *

4. Amend § 679.5 by:

- a. Adding paragraph (a)(1)(iii)(G);
- b. Revising paragraph (a)(4)(i); and
- c. Adding paragraph (x).

The additions and revisions read as follows:

§ 679.5 Recordkeeping and Reporting (R&R).

(a) * * *

(1) * * *

(iii) * * *

If harvest made under . . .	Record the . . .	For more information,
program		see . . .

* * * * *

(G) PCTC Program Cooperative number subpart L to this part.

* * * * *

(4) * * *

(i) *Catcher vessels less than 60 ft (18.3 m) LOA.* Except for vessels using pot gear as described in paragraph (c)(3)(i)(B)(I) of this section or vessels participating in the PCTC Program as described in paragraph (x) of this section, the owner or operator of a catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with the R&R requirements of this section, but must comply with the vessel activity report described at paragraph (k) of this section.

* * * * *

(x) *PCTC Program.* The owners and operators of catcher vessels and processors authorized as participants in the PCTC Program must comply with the applicable recordkeeping and reporting requirements of this section and must assign all catch to a PCTC Program cooperative at the time of catch or receipt of groundfish. Owners of catcher vessels and processors authorized as participants in the PCTC Program must ensure that their designated representatives or employees comply with applicable recordkeeping and reporting requirements as described in § 679.134.

5. In § 679.7 add paragraph (m) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(m) *PCTC Program -*

(1) *General.*

(i) Name an LLP license in more than one PCTC Program cooperative application in a fishing year.

(ii) Use a vessel to catch or receive a PCTC Program cooperative's Pacific cod when that vessel was not listed on the PCTC Program cooperative's application for PCTC Program CQ.

(iii) Fail to comply with any other requirement or restriction specified in this part or violate any provision of this part.

(2) *Vessel operators participating in the PCTC Program.*

(i) Fail to follow the catch monitoring requirements detailed in § 679.134 while fishing under a CQ permit issued to a PCTC Program cooperative.

(ii) Operate a vessel that is subject to a sideboard limit detailed in § 679.133, as applicable, and fail to follow the catch monitoring requirements detailed in § 679.134.

(iii) Exceed the ownership or use caps specified at § 679.133. Owners and operators of vessels participating in the PCTC Program are jointly and severally liable for any violation of PCTC Program regulations while fishing under the authority of a CQ permit.

(3) *VMS.*

(i) Operate a vessel in a PCTC Program cooperative and fail to use functioning VMS equipment as described at § 679.134.

(ii) Operate a vessel that is subject to a sideboard limit detailed in § 679.133 and fail to use functioning VMS equipment as described in § 679.134.

(4) *PCTC Program processors.*

(i) Take deliveries of, or process, PCTC Program Pacific cod harvested by a catcher vessel fishing under the authority of a PCTC CQ permit unless operating as a processor.

(ii) Process any groundfish delivered by a catcher vessel fishing under the authority of a CQ permit not weighed on a scale approved by the State of Alaska. The scale must meet the requirements specified in § 679.28(c).

(iii) Fail to submit a timely and complete Pacific cod Ex-vessel Volume and Value Report as required under § 679.5(u)(1).

(iv) Use a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement to sort, process, or discard any species, except halibut sorted on deck by vessels participating in halibut deck sorting described at § 679.120, before the total catch is weighed on a scale that meets the requirements of § 679.28(b).

(v) Use a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement to process Pacific cod in excess of the at-sea processing sideboard limit defined at § 679.133(b)(2) and assigned to the LLP license.

(vi) Process an amount of Pacific cod that exceeds use caps specified in § 679.133. The owners and operators of the individual processors that process Pacific cod are jointly and severally liable for any violation of PCTC Program regulations.

(5) PCTC cooperatives.

(i) Fail to retain any Pacific cod caught by a vessel when that vessel is fishing under the authority of a PCTC Program cooperative CQ permit.

(ii) Harvest PCTC Program Pacific cod, use halibut PSC, or use crab PSC assigned to a PCTC cooperative in the BSAI without having on board a legible copy of valid PCTC Program CQ permit.

(iii) Begin a fishing trip for PCTC Program Pacific cod with any vessel named in a PCTC Program cooperative if the total amount of unharvested PCTC Program Pacific cod on a CQ permit currently held by that cooperative is zero or less.

(iv) Operate a vessel fishing under the authority of a CQ permit issued to a PCTC Program cooperative and have any Pacific cod aboard the vessel unless those fish were harvested under the authority of a PCTC Program CQ permit.

(v) Have a negative balance in a PCTC Program CQ account after the end of the calendar year for which a PCTC Program CQ permit was issued.

(vi) Fail to submit a PCTC Program cost recovery fee payment as required under § 679.135.

* * * * *

6. Amend § 679.20 by, revising paragraph (a)(7)(viii) and adding paragraph (e)(3)(vi) to read as follows:

§ 679.20 General limitations.

(a) * * *

(7) * * *

(viii) *Aleutian Islands PCTC Program set-aside provisions.* - During the annual harvest specifications process, the Regional Administrator will establish the Aleutian Islands PCTC Program set-aside through the process set forth at § 679.132.

* * * * *

(e) * * *

(3) * * *

(vi) For a catcher/processor with a BSAI Pacific cod trawl mothership endorsement that receives an unsorted codend delivered by a catcher vessel authorized to harvest PCTC Program Pacific cod, the maximum retainable amount for each species or species group applies at any time for the duration of the fishing trip and must be applied to only the PCTC Program hauls during a fishing trip.

* * * * *

7. In § 679.21, revise paragraphs (b)(1)(ii)(B) introductory text and (B)(5); (b)(2)(iii)(A) and (B); (b)(4)(i)(B); (e)(3)(iv) introductory text and (iv)(E); and add paragraph (e)(7)(v) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) *Trawl fishery categories.* For purposes of apportioning the trawl PSC limit set forth under paragraph (b)(1)(ii)(A)(1) of this section among trawl fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

* * * * *

(5) *Pacific cod fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under this paragraph (b)(1)(ii)(B). This Pacific cod fishery is further apportioned between the PCTC Program, the trawl catcher vessel limited access C season, and AFA catcher/processors as established at § 679.131(c) and (d).

* * * * *

(2) * * *

(iii) * * *

(A) *Unused seasonal apportionments.* Unused seasonal apportionments of trawl fishery PSC allowances made under paragraph (b)(2) of this section will be added to its respective fishery PSC allowance for the next season during a current fishing year except

for the Pacific cod fishery apportionment to the PCTC Program, which follows the regulations at § 679.131(c) and (d).

(B) *Seasonal apportionment exceeded.* If a seasonal apportionment of a trawl fishery PSC allowance made under paragraph (b)(2) of this section is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from its respective apportionment for the next season during a current fishing year except for the Pacific cod fishery apportionment to the PCTC Program, which follows the regulations at § 679.131(c) and (d).

* * * * *

(4) * * *

(i) * * *

(B) *Closures.* Except as provided in paragraph (b)(4)(i)(A) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (b)(1)(ii)(B)(2) through (6) of this section will catch the halibut PSC allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b)(1)(i) or (ii) of this section, NMFS will publish in the **FEDERAL REGISTER** the closure of the entire BSAI to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season. This does not apply to allocations to the PCTC Program specified at § 679.133(b).

* * * * *

(e) * * *

(3) * * *

(iv) *Trawl fishery categories.* For purposes of apportioning trawl PSC limits for crab and herring among fisheries, other than crab PSC CQ assigned to an Amendment 80 cooperative, the following fishery categories are specified and defined in terms of round-

weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

* * * * *

(E) *Pacific cod fishery*. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under this paragraph (e)(3)(iv). The Pacific cod fishery is further apportioned between the PCTC Program, the trawl catcher vessel limited access C season, and AFA catcher/processors as established at § 679.131(d).

* * * * *

(7) * * *

(v) Paragraph (e)(7) of this section does not apply to apportionments to the PCTC Program as described in § 679.130.

* * * * *

9. Amend § 679.51 by:

- a. Revising paragraph (a)(2)(i)(C)(4);
- b. Adding paragraphs (a)(2)(i)(C)(5) and (vi)(G);
- c. Revising paragraphs (e)(1)(iii)(A) and (B) introductory text; and
- d. Adding paragraph (e)(1)(iii)(D).

The revisions and additions read as follows:

§679.51 Observer and Electronic Monitoring System requirements for vessels and plants.

(a) * * *

(2) * * *

(i) * * *

(C) * * *

(4) Using trawl gear in the BSAI if the vessel has been placed in the full observer coverage category under paragraph (a)(4) of this section; or

(5) Participating in the PCTC Program.

* * * * *

(vi) * * *

(G) *PCTC Program Motherships.* A mothership that receives unsorted codends from catcher vessels harvesting Pacific cod under the PCTC Program must have at least two observers aboard the mothership, at least one of whom must be endorsed as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(A) *Observer use of equipment.* Allow an observer to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages (including electronic transmission of data), at no cost to the observer or the United States.

(B) *Equipment, software, and data transmission requirements.* The operator of a catcher/processor (except for a catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section), mothership, catcher vessel 125 ft LOA or longer (except for a catcher vessel fishing for groundfish with pot gear), or a catcher vessel participating in the PCTC Program (except for paragraph (D)) must provide the following equipment, software and data transmission capabilities:

* * * * *

(D) *PCTC Program*. The operator of a non-AFA catcher vessel participating in the PCTC Program is not required to comply with paragraph (e)(1)(iii)(B)(3) of this section to provide data transmission capability until [*Date 3 years after effective date of the final rule*]. However, once any non-AFA catcher vessel in the PCTC Program is capable of at-sea data transmission, the operator must comply.

* * * * *

§ 679.64 [Amended]

10. In § 679.64, remove and reserve paragraphs (b)(3)(ii) and (4)(i).

11. Add Subpart L, consisting of §§ 679.130 through 679.135 to read as follows:

Subpart L — Pacific Cod Trawl Cooperative Program

Sec.

679.130 Allocation, use, and transfer of PCTC Program QS permits.

679.131 PCTC Program annual harvester privileges.

679.132 Aleutian Islands set-aside provisions in the PCTC Program.

679.133 PCTC Program use caps and sideboard limits.

679.134 PCTC Program permits, catch monitoring, catch accounting, and recordkeeping and reporting.

679.135 PCTC Program cost recovery.

Subpart L – Pacific Cod Trawl Cooperative Program

§ 679.130 Allocation, use, and transfer of PCTC Program QS.

(a) *Applicable areas and seasons.*

(1) *Applicable fishery.* The PCTC Program applies to the Pacific cod trawl catcher vessel sector in the BSAI as defined in § 679.20(a)(7)(ii)(A).

(2) *PCTC Program Fishing Seasons.* The following fishing seasons apply to fishing under this subpart subject to other provisions of this part:

(i) *PCTC Program cooperative A season.* Fishing by vessels participating in a cooperative is authorized from 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., April 1.

(ii) *PCTC Program cooperative B season.* Fishing by vessels participating in a cooperative is authorized from 1200 hours, A.l.t., April 1 through 1200 hours, A.l.t., June 10.

(iii) *Limited Access C Season.* The PCTC Program does not apply to the Pacific cod trawl catcher vessel C season, as defined in § 679.23(e)(5)(ii)(C)(1).

(b) *Pacific cod legal landings.* Pacific cod legal landings means the retained catch of Pacific cod caught using trawl gear in a management area in the BSAI by a catcher vessel during the directed fishing season for Pacific cod that:

(1) Was made in compliance with state and Federal regulations in effect at that time; and

(2) Was recorded on a State of Alaska fish ticket for shoreside deliveries or in observer data for mothership deliveries; and

(3) Was the predominately retained species on the fishing trip; and

(4) Was authorized by:

(i) An LLP license and caught in the A or B season of a Federal or parallel groundfish fishery during the qualifying years 2009 through 2019; or

(ii) An LLP license with a transferable AI endorsement prior to receiving an AI endorsement and was caught in a parallel fishery between January 20, 2004 and September 13, 2009; and

(5) Was not made in a CDQ fishery; and

(6) Was not made in a State of Alaska GHF fishery.

(c) *Eligible PCTC Program harvesters.* NMFS will assign Pacific cod legal landings to an LLP license only if the qualifying Pacific cod legal landings of BSAI trawl

catcher vessel Pacific cod were made under the authority of a fully transferable LLP license endorsed for BS or AI Pacific cod with a trawl gear designation from 2009 through 2019 or under the authority of an LLP license endorsed for Pacific cod with a trawl gear designation prior to earning a transferable AI endorsement from 2004 through September 13, 2009;

(d) *Assigning trawl catcher vessel Pacific cod legal landings to an LLP license.*

(1) NMFS will assign Pacific cod legal landings to an LLP license in the form of QS only if the holder of the LLP license with those landings submits a timely and complete application for Pacific cod QS, in paragraph (h) of this section, that is approved by NMFS.

(2) NMFS will assign Pacific cod legal landings to an LLP license that meets the requirements of paragraph (b) of this section.

(3) NMFS will reissue LLP licenses to eligible harvesters that specify the number of QS units assigned to their LLP licenses.

(e) *Eligible PCTC Program Processors.* NMFS will assign legal landings to an eligible PCTC Program processor if the processor operates under the authority of a valid FFP or FPP and received deliveries of legal landings of Pacific cod from the trawl catcher vessel sector from 2009 through 2019. A processor is ineligible to receive PCTC Program QS if its FFP or FPP is no longer active as of [Date 30 days after the effective date of the final rule].

(f) *Assigning Pacific cod processing history to an eligible processor.*

(1) NMFS will assign Pacific cod processing history to a processor in the form of QS only if the FFP or FPP holder submits a timely and complete application for PCTC Program QS that is approved by NMFS pursuant to paragraph (h) of this section.

(2) NMFS will assign Pacific cod processing history based on legal landings delivered to a processor authorized by an FPP or FFP that meets the requirements of this section.

(3) For the initial allocation of QS, qualifying processing history is attached to the processor at the time legal landings were received.

(4) An eligible processor will be issued a PCTC Program QS permit that specifies the number of QS units assigned to that processor.

(g) *PCTC Program official record.*

(1) *Use of the PCTC Program official record.* The PCTC Program official record will contain information used by the Regional Administrator to determine:

(i) The amount of Pacific cod legal landings as defined in § 679.130 assigned to an LLP license;

(ii) The amount of Pacific cod processing history of legal landings as defined in § 679.130 assigned to an FPP or FFP;

(iii) The amount of PCTC Program QS resulting from Pacific cod legal landings assigned to an LLP license held by an eligible harvester, or QS resulting from Pacific cod processing history assigned to an FPP or FFP held by an eligible processor;

(iv) The amount of Pacific cod sideboard ratios assigned to LLP licenses;

(v) Eligibility to participate in the PCTC Program; and

(vi) QS assigned to PCTC Program participants.

(2) *Presumption of correctness.* The PCTC Program official record is presumed to be correct. An applicant participating in the PCTC Program has the burden to prove otherwise.

(3) *Documentation.* Only Pacific cod legal landings and processing history of legal landings, as described in paragraph (b) of this section, shall be used to establish an allocation of PCTC Program QS. Evidence of legal landings shall be limited to

documentation of state or Federal catch reports that indicate the amount of Pacific cod harvested, the groundfish reporting area in which it was caught, the vessel and gear type used to catch it, and the date of harvesting, landing, or reporting.

(4) *Non-severability of Pacific cod legal landings.* Pacific cod legal landings are non-severable from the LLP license or PCTC Program QS Permit to which those Pacific cod legal landings are assigned according to the PCTC Program official record except under the following provisions:

(i) If multiple LLP licenses authorized catch by a vessel, in the absence of an agreement provided by the LLP license holder at the time of application for QS, qualifying catch history will be assigned to an LLP license by the owner of the vessel that made the catch at the time of application.

(ii) *90-day transfer provision.*

(A) For the LLP licenses associated with non-exempt AFA catcher vessels, within 90 days of initial issuance of QS, the owners of the LLP licenses that are associated with AFA non-exempt catcher vessels that had engaged in fish transfer agreements during the qualifying periods may transfer QS to other LLP licenses associated with AFA non-exempt vessels, subject to the ownership cap in § 679.133.

(B) NMFS will execute permanent transfers of QS between eligible LLPs during the 90-day transfer provision upon showing that both the transferor and transferee agree to the one-time transfer of QS and understand the transfer will be permanent, or upon showing a transfer is authorized by an operation of law (*e.g.* a court order). Requests to transfer QS must specify which LLP is transferring QS, which LLP is receiving QS, and the amount of QS to be transferred.

(C) After the expiration of the 90-day transfer provision, PCTC QS will no longer be severable from the LLP license to which it is assigned unless authorized by the

transfer rules specified in paragraph (f) of this section or modification is supported by an operation of law.

(h) Application for PCTC Program Quota Share -

(1) Submission of an application for PCTC Program quota share. A person who wishes to receive QS to participate in the PCTC Program as an eligible harvester or an eligible processor must submit a timely and complete application for PCTC Program QS. An application form will be provided by NMFS or available from NMFS Alaska Region website as defined at § 679.2. The acceptable submittal methods will be described on the application form.

(2) Deadline. A completed application for PCTC Program QS must be received by NMFS no later than 1700 hours, A.l.t., on [Date *30 days after the effective date of the final rule*], or if sent by U.S. mail, postmarked by that time. Objective written evidence of timely application will be considered proof of a timely application.

(3) Contents of application. A timely and complete application must contain the information specified on the application for PCTC Program QS with all required documentation attached.

(i) Additional required documentation for LLP license holders. Vessel names, ADF&G vessel registration numbers, and USCG documentation numbers of all vessels that fished under the authority of each LLP license, including dates when landings were made under the authority of an LLP license from 2009 through 2019 or under the authority of an LLP license prior to earning a transferable AI endorsement from 2004-2019;

(ii) Additional required documentation for processors. Processor name, FFP or FPP number, and location of processing plant, including dates when landings were made under the authority of an LLP license from 2009 through 2019;

(iii) The applicant must sign and date the application certifying under penalty of perjury that all information is true and correct. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(4) *Application evaluation.* The Regional Administrator will evaluate applications and compare all claims of catch history or processing history in an application with the information in the PCTC Program official record. Application claims that are consistent with information in the PCTC Program official record will be approved by the Regional Administrator. Application claims that are inconsistent with the PCTC Program official record will not be approved unless supported by documentation sufficient to substantiate such claims. An applicant who submits claims of catch history or processing history that are inconsistent with the official record without sufficient evidence, or an applicant who fails to submit the information specified in paragraph (d) of this section, will be provided a single 30-day evidentiary period to submit the specified information, submit evidence to verify their claims of catch or processing history, or submit a revised application consistent with information in the PCTC Program official record. An applicant who claims catch or processing history that is inconsistent with information in the PCTC Program official record has the burden of proving that the submitted claims are correct. Any claims that remain unsubstantiated after the 30-day evidentiary period will be denied. All applicants will be notified of NMFS's final application determinations by an initial administrative determination (IAD), which will inform applicants of their appeal rights under 15 CFR part 906.

(5) *Appeals.* An applicant may appeal an IAD under the provisions in 15 CFR part 906.

(i) *Assigning PCTC Program QS to Harvesters and Processors.* The Regional Administrator will assign PCTC Program QS only to an eligible harvester or eligible

processor who submits a timely application for PCTC Program QS that is approved by NMFS.

(1) *Calculation of PCTC Program QS allocation to LLP licenses without a transferable AI endorsement.* NMFS will assign a specific amount of PCTC Program QS units to each LLP license based on the Pacific cod legal landings of each LLP license using information from the PCTC Program official record according to the following procedures:

(i) Determine the Pacific cod legal landings for each LLP license for each calendar year from 2009 through 2019.

(ii) Select the 10 calendar years from the qualifying time period with the highest amount of legal landings for each LLP license, including years with zero metric tons if necessary.

(iii) Sum the Pacific cod legal landings of the highest 10 years for each LLP license. This yields the QS units (in metric tons) for each LLP license.

(2) *Calculation of PCTC Program QS allocation to LLP licenses with transferable AI endorsements.* NMFS will assign a specific amount of PCTC Program QS units to each LLP license with a transferable AI endorsement based on the Pacific cod legal landings of each using information from the PCTC Program official record according to the following procedures:

(i) Determine the Pacific cod legal landings for each LLP license with a transferable AI endorsement for each calendar year from 2004 through 2019.

(ii) Select the fifteen calendar years that yield the highest amount of legal landings for each LLP license, including years with zero metric tons if necessary.

(iii) Sum the Pacific cod legal landings of the highest fifteen years for each LLP license with transferable AI endorsement. This yields the QS units (in metric tons) for each LLP license with a transferable AI endorsement.

(3) *Official Record Date.* The initial PCTC Program QS pool for all LLP licenses, with and without transferable AI endorsements, is the sum of the sum of the QS units assigned to all LLP licenses in metric tons based on the PCTC Program official record as of December 31, 2022.

(4) *Calculation of PCTC Program QS allocation to processors.* NMFS will assign a specific amount of Pacific cod QS units to each eligible processor based on the Pacific cod legal landings delivered to each FPP or FFP using information from the PCTC Program official record according to the following procedures:

(i) Sum the Pacific cod legal landings delivered to each FPP or FFP for each calendar year from 2009 through 2019;

(ii) Select the ten calendar years that yield the highest amount of legal landings delivered to each FPP or FFP, including years with zero metric tons if necessary;

(iii) Sum the Pacific cod legal landings of the highest 10 years for each FPP or FFP. This yields the QS units for each eligible processor, which will be specified on a PCTC Program Processor Permit for that processor;

(iv) The PCTC Program QS pool for processors is the sum of all QS units assigned to processors in metric tons based on the PCTC official record as of December 31, 2022.

(j) *Transfer of PCTC Program QS.*

(1) Transfer of an LLP license with PCTC Program QS. A person may transfer an LLP license and any PCTC Program QS assigned to that LLP license under the provisions in § 679.4(k)(7), provided that the LLP license is not assigned PCTC Program QS in excess of the ownership cap specified in § 679.133 at the time of transfer.

(2) Transfer of PCTC Program QS assigned to LLP licenses that exceeds PCTC Program QS ownership caps.

(i) If an LLP license receives an initial allocation of QS that exceeds an ownership cap specified in § 679.133(a), upon transfer of the LLP license, the LLP license holder may transfer the amount of QS in excess of the ownership cap separately from the LLP license and assign it to one or more LLP licenses. However, a transfer will not be approved by NMFS if that transfer would cause the receiving LLP license to exceed an ownership cap specified in § 679.133(a).

(ii) Prior to the transfer of an LLP license that received an initial allocation of QS that exceeds an ownership cap specified in § 679.133(a), the LLP license holder must transfer the QS that is in excess of the ownership cap separately from that LLP license and assign it to one or more LLP licenses. On completion of the transfer of QS, the LLP license that was initially allocated an amount of QS in excess of the ownership cap may not exceed any ownership cap specified in § 679.133(a).

(iii) Any QS associated with the LLP license that is in excess of the ownership cap may be transferred only if an application to transfer LLP licenses is approved as specified in § 679.4(k)(7).

(iv) QS that is transferred from an LLP license that was initially allocated an amount of QS in excess of the ownership cap specified in § 679.133(a) and assigned to another LLP license may not be severed from the receiving LLP license.

(3) Transfer of processor PCTC Program QS Permits. A person may transfer a PCTC Program QS Permit to another processor eligible to hold that permit and any QS assigned to that permit provided that the permit is not assigned QS in excess of the ownership cap specified in § 679.133(a) at the time of transfer. PCTC Program QS may be severed from a PCTC Program QS permit at the time of transfer if the transfer of the PCTC Program QS permit would otherwise result in a transferee exceeding an ownership cap. A PCTC Program QS Permit held by a processor and associated QS may be

transferred only if the application for transfer of PCTC Program QS Permit is filled out entirely.

(4) Transfer of PCTC Program QS assigned to a processor-held PCTC Program QS Permit that exceeds PCTC Program ownership caps.

(i) If a PCTC Program QS Permit receives an initial allocation of QS that exceeds an ownership cap specified in § 679.133(a), the processor may transfer QS in excess of the ownership cap separately from that PCTC Program QS Permit and assign it to the PCTC Program QS Permit of one or more eligible processors. However, a transfer may not be approved by NMFS if that transfer would cause the receiving processor to exceed an ownership cap specified in § 679.133(a).

(ii) Prior to the transfer of a PCTC Program QS Permit that received an initial allocation of QS that exceeds an ownership cap specified in § 679.133(a), the permit holder must transfer the QS that is in excess of the ownership cap separately from that PCTC Program QS Permit and assign it to one or more PCTC Program QS Permits. On completion of the transfer of QS, the PCTC Program QS Permit that was initially allocated an amount of QS in excess of the ownership cap may not exceed any ownership cap specified in § 679.133(a).

(iii) Any QS associated with the PCTC Program QS Permit held by a processor that is in excess of an ownership cap may be transferred only if the application for transfer of PCTC Program QS Permit is filled out entirely.

§ 679.131 PCTC Program annual harvester privileges.

(a) Assigning PCTC Program CQ to a PCTC cooperative.

(1) General. (See also § 679.4(q)).

(i) Every calendar year, PCTC Program QS assigned to LLP licenses and PCTC Program QS Permits held by a PCTC Program processor must be assigned to a PCTC

cooperative as a CQ permit to use the CQ derived from that PCTC QS to catch, process, or receive Pacific cod, crab PSC, or halibut PSC assigned to the PCTC Program.

(ii) NMFS will assign CQ permit to a PCTC Program cooperative based on the aggregate QS of all LLP licenses and associated processors designated on an application for CQ that is approved by the Regional Administrator as described under paragraph (a)(4) of this section.

(iii) Eligible processors must be associated with a PCTC Program cooperative for the QS assigned to that processor's PCTC Program QS Permit to be issued to a PCTC Program cooperative as CQ.

(2) PCTC Program QS issued after issuance of CQ or Pacific cod trawl catcher vessel sector TAC. Any PCTC Program QS on an LLP license or PCTC Program QS Permit assigned to a PCTC QS holder after NMFS has issued CQ for a calendar year, will not result in any additional CQ being issued to a PCTC cooperative if that QS holder has assigned their QS to a PCTC Program cooperative for that calendar year.

(3) Failure to designate QS to a PCTC Program cooperative. Failure to designate an LLP license with PCTC Program QS or a PCTC Program QS Permit on a timely and complete application for CQ that is approved by the Regional Administrator as described under paragraph (a)(4) of this section, will result in the Regional Administrator not assigning that QS to a PCTC Program cooperative for the applicable calendar year.

(4) Application for PCTC Program CQ. PCTC Program cooperatives must submit a complete application by November 1 to receive PCTC Program CQ and identify the following:

(i) PCTC Program cooperative identification, including but not limited to the name of the cooperative and the taxpayer identification number;

(ii) PCTC Program QS holders and ownership documentation;

(iii) PCTC Program cooperative member vessels and LLP licenses;

(iv) PCTC Program cooperative associated processors;

(v) Vessels on which the CQ issued to the PCTC Program cooperative will be used;

(vi) Certification of cooperative representative;

(vii) Attach a copy of the membership agreement or contract that includes the following terms:

(A) How the cooperative intends to catch its PCTC Program CQ;

(B) The obligations of QS holders who are members of a PCTC Program cooperative to ensure the full payment of PCTC Program fee liabilities that may be due;

(C) How cooperatives monitor and report leasing activity into GOA fisheries; and

(D) A cooperative intending to harvest any amount of the CQ set-aside must provide the cooperative's plan for coordinating harvest and delivery of the CQ set-aside with an Aleutian Islands shoreplant as defined in § 679.2.

(viii) Each year, all cooperatives must establish an inter-cooperative agreement.

This inter-cooperative agreement must be provided as part of each annual cooperative application and is required before NMFS will issue CQ. The inter-cooperative agreement must establish how the cooperatives intend to harvest the CQ set-aside in years when it applies and ensure harvests in the BS do not exceed the minimum set-aside as specified in § 679.132(a)(4)(i).

(b) Allocations of PCTC Program Pacific cod.

(1) *General.* Each calendar year, the Regional Administrator will determine the amount of the BSAI trawl catcher vessel sector's Pacific cod A and B season allocations that will be assigned to the PCTC Program as follows:

(i) *Incidental catch allowance (ICA).* For the A and B seasons, the Regional Administrator will establish an ICA to account for projected incidental catch of Pacific

cod by trawl catcher vessels engaged in directed fishing for groundfish other than PCTC Program Pacific cod.

(ii) *Directed fishing allowance (DFA)*. The remaining trawl catcher vessel sector's Pacific cod A and B season allocations are established as a DFA for the PCTC Program.

(2) *Calculation.*

(i) *Determination of Pacific cod trawl catcher vessel TAC allocated to the PCTC Program*. NMFS will determine the Pacific cod trawl catcher vessel TAC in a calendar year in the annual harvest specification process in § 679.20.

(ii) *Annual apportionment of Pacific cod trawl catcher vessel TAC*. The annual apportionment of Pacific cod in the A and B seasons between the PCTC Program DFA and the ICA in a given calendar year is established in the annual harvest specifications.

(3) *Allocations of Pacific Cod DFA to PCTC Program.*

(i) *Harvester Percentage of DFA*. NMFS will assign 77.5 percent of the PCTC Program DFA to the QS attached to LLP licenses assigned to PCTC Program cooperatives. Each LLP license's QS units will correspond to a portion of the DFA according to the following equation: $(\text{LLP license QS units} / (\text{sum of all LLP license QS units})) \times (.775 \times \text{DFA})$.

(ii) *Processor Percentage of DFA*. NMFS will assign 22.5 percent of the PCTC Program DFA to the QS attached to PCTC Program QS Permits assigned to PCTC Program cooperatives. Each QS Permit's QS units will correspond to a portion of the DFA according to the following equation: $(\text{PCTC Program QS permit QS units} / (\text{sum of all PCTC Program QS permit QS units})) \times (.225 \times \text{DFA})$.

(4) *Allocation of CQ to PCTC Program cooperatives -*

(i) *General*. Annual CQ will be issued to each cooperative by NMFS based on the aggregate QS attached to LLP licenses and PCTC Program QS permits that are assigned

to the cooperative. NMFS will issue CQ by A and B season and cooperatives will ensure the seasonal limits are not exceeded. Unused A season CQ may be rolled over to the B season. Annual CQ may be harvested from either BS or AI subareas.

(ii) *CQ allocation for PCTC Program.* The amount of CQ that is assigned to a PCTC Program cooperative is expressed algebraically as follows:

CQ derived from QS assigned to LLP holders =

$[(.775 \times \text{DFA})$

$\times (\text{Total LLP license QS units assigned to that cooperative} / \text{sum of all LLP license QS units})]$

CQ derived from QS assigned to FFP and FPP holders =

$[(.225 \times \text{DFA})$

$\times (\text{Total PCTC Program Permit QS units assigned to that cooperative} / \text{sum of all PCTC Program QS permit QS units})]$

The total CQ assigned to that cooperative =

CQ derived from LLP license holders +

CQ derived from PCTC Program QS permit holders

(iii) *Issuance of CQ.* A and B season trawl catcher vessel Pacific cod sector DFAs will be allocated to cooperatives as CQ. Annual CQ for each PCTC Cooperative will be issued separately as A and B season CQ.

(iv) *AI set-aside.* When in effect, the AI set-aside will be established annually as specified further at § 679.132.

(c) *Halibut PSC.*

(1) *Halibut PSC limit for the PCTC Program.* The overall halibut PSC limit for the PCTC Program for each calendar year is specified in the harvest specifications pursuant to the procedures specified at §679.21(b). That halibut PSC limit is then assigned to cooperatives pursuant to paragraph (a)(1)(i) of this section.

(i) Multiply the halibut PSC limit apportioned to the BSAI trawl limited access sector's Pacific cod fishery category by 98 percent, which yields the halibut PSC apportioned to the trawl catcher vessel sector. The remaining 2 percent is apportioned to the AFA catcher/processor sector as specified in § 679.21(b)(4).

(ii) Assign 95 percent of the trawl catcher vessel sector's halibut PSC limit to the A and B seasons and 5 percent to the C season.

(iii) Each year after apportioning halibut PSC to the trawl catcher vessel sector for the A and B season, apply one of the following reductions to the A and B season trawl catcher vessel halibut PSC limit to determine the overall PCTC Program halibut PSC limit:

(A) In the first year of the PCTC Program, reduce the A and B season halibut PSC limit by 12.5 percent.

(B) In the second year, and each year thereafter, reduce the A and B season halibut PSC limit by 25 percent.

(2) *Halibut PSC assigned to each PCTC Program cooperative.* For each calendar year, the amount of halibut PSC assigned to a cooperative is determined by the following procedure and the amount will be specified on the CQ permit:

(i) Divide the amount of PCTC Program CQ units assigned to each PCTC Program cooperative by the amount of CQ allocated to all cooperatives. This yields the percentage of PCTC Program CQ units held by each cooperative.

(ii) Multiply the overall PCTC Program halibut PSC limit by the percentage of the PCTC Program CQ assigned to a cooperative. This yields the amount of halibut PSC issued to that cooperative as CQ.

(3) *Use of halibut PSC in the PCTC Program.* Halibut PSC limits assigned to the PCTC Program may only be used by the members of the PCTC Program. A halibut PSC limit is assigned to the CQ permit issued to a cooperative for use while harvesting CQ in

the BSAI. Any halibut PSC used by a cooperative must be deducted from the amount of halibut PSC on its CQ permit. A halibut PSC limit on a CQ permit may be used only by the members of the cooperative to which it is assigned. Halibut PSC limits for cooperatives are not subject to seasonal apportionment under § 679.21. Halibut PSC limits are issued to the PCTC Program for the duration of the A and B seasons. Halibut PSC limits may be reapportioned to the C season.

(d) Allocations of crab PSC.

(1) Crab PSC limits for the PCTC Program. The overall crab PSC limit for the PCTC Program for each calendar year is specified in the harvest specifications pursuant to the procedures specified at § 679.21(e). That crab PSC limit is then assigned to cooperatives with CQ pursuant to paragraph (a)(1)(i) of this section.

(i) Multiply the crab PSC limit apportioned to the BSAI trawl limited access sector's Pacific cod fishery category by 90.6 percent, which yields the percentage of crab PSC apportioned to the trawl catcher vessel sector. The remaining 9.4 percent goes to the AFA catcher/processor sector as specified in § 679.21(b)(4).

(ii) Assign 95 percent of the trawl catcher vessel sector's crab PSC limit to the A and B seasons and 5 percent to the C season.

(iii) Reduce the A and B season trawl catcher vessel crab PSC limit by 35 percent to determine the overall PCTC Program crab PSC limit.

(2) Crab PSC assigned to each PCTC Program cooperative. For each calendar year, the amount of crab PSC limit assigned to a cooperative is determined by the following procedure and the amount will be specified on the CQ permit:

(i) Divide the amount of PCTC Program CQ assigned to each PCTC Program cooperative by the total CQ assigned to all cooperatives. This yields the percentage of PCTC Program CQ held by that cooperative.

(ii) Multiply the overall PCTC Program crab PSC limit by the percentage of the PCTC Program CQ pool assigned to a cooperative. This yields the crab PSC limit issued to that cooperative as CQ.

(3) *Use of crab PSC in the PCTC Program.* Crab PSC limits assigned to the PCTC Program may only be used by the members of the PCTC Program. A crab PSC limit is assigned to the CQ permit issued to a PCTC Program cooperative for use while harvesting CQ in the BSAI. Any crab PSC used by a cooperative must be deducted from the amount of crab PSC limit on its CQ permit. A crab PSC limit on a CQ permit may be used only by the members of the cooperative to which it is assigned. Crab PSC limits for cooperatives are not subject to seasonal apportionment under § 679.21. Crab PSC limits are issued to the PCTC Program for the duration of the A and B seasons. Crab PSC limits may be reapportioned to the C season.

(e) *Transfer of PSC Limits.* Halibut and crab PSC limits are transferable between cooperatives according to the same rules established for CQ at § 679.130(g)(4).

(f) *Non-allocated Groundfish species.* The PCTC Program allocations are for directed fishing for Pacific cod by trawl catcher vessels. All groundfish species not allocated to PCTC Program cooperatives are managed to the maximum retainable amounts (MRAs), as described under § 679.20(e).

(g) *Rollover of Pacific cod.* If, after June 10, the Regional Administrator determines that reallocating a portion of the Pacific cod ICA or DFA from the PCTC Program to the BSAI trawl limited access sector C season is appropriate, the Regional Administrator may do so through notification in the **FEDERAL REGISTER** consistent with regulations at § 679.20(a)(7)(iii).

(h) *Rollover of PSC to the C Season.* If, after June 10, the Regional Administrator determines that reallocating a portion of the halibut or crab PSC limits from the PCTC Program to the BSAI trawl limited access sector C season is appropriate, the Regional

Administrator may do so through notification in the *FEDERAL REGISTER* consistent with regulations at § 679.91(f)(4) and (5).

(i) *Process for inter-cooperative transfer of PCTC Program CQ.* NMFS will process an application on eFish for an online inter-cooperative transfer of CQ, including PSC, provided that all information is completed by the transferor and transferee, with all applicable fields accurately filled in, and all required documentation is provided.

(j) *PCTC Program cooperative -*

(1) *General.* This section governs the formation and operation of PCTC Program cooperatives. The regulations in this section apply only to PCTC Program cooperatives that have formed for the purpose of applying for and fishing with CQ issued annually by NMFS. PCTC Program cooperatives and cooperative members are responsible for ensuring the conduct of cooperatives is consistent with any relevant state or Federal antitrust laws. Membership in a cooperative is voluntary. No person may be required to join a cooperative. Any LLP license holder with PCTC Program QS may join a PCTC Program cooperative and assign their QS to that cooperative. Members may leave a cooperative, but any CQ derived from the QS held by that member will remain with that cooperative for the duration of the calendar year.

(2) *Legal and organizational requirements.* A PCTC Program cooperative must meet the following legal and organizational requirements before it is eligible to receive CQ:

(i) Each PCTC Program cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia;

(ii) Each PCTC Program cooperative must appoint an individual as the designated representative to act on the cooperative's behalf and to serve as a contact point for NMFS for questions regarding the operation of the cooperative. The designated representative

may be a member of the cooperative, or some other individual designated by the cooperative to act on its behalf;

(iii) Each PCTC Program cooperative must submit a timely and complete application for CQ; and

(iv) Each PCTC Program cooperative must meet the mandatory requirements established in paragraph (j)(3) of this section applicable to that PCTC Program cooperative.

(3) *Mandatory requirements.* The following table describes the requirements to form a PCTC Program cooperative:

(i) Who may join or associate with a PCTC Program cooperative?	Any PCTC Program QS holder named on a timely and complete application for CQ for that calendar year that is approved by NMFS. Individuals who are not QS holders may be employed by, or serve as the designated representative of, a cooperative, but cannot be members of the cooperative. Any processor may associate with a cooperative.
(ii) What is the minimum number of LLP licenses required to form a cooperative?	A minimum of three LLP licenses are needed to form a cooperative.
(iii) How many unique LLP license holders are required to form a cooperative?	There is no minimum number of unique LLP license holders required to form a cooperative.
(iv) Is there a minimum amount of PCTC Program QS units that must be assigned to a PCTC Program cooperative?	No.
(v) What is allocated to the PCTC Program cooperatives?	A and B season CQ for Pacific cod, halibut PSC limits, and crab PSC limits, based on the total QS units assigned to the cooperative by its members.
(vi) Is this CQ an exclusive catch and use privilege?	Yes, the members of the cooperative have an exclusive privilege to collectively catch and use this CQ, or a cooperative can transfer all or a portion of this CQ to another cooperative.
(vii) Is there a period in a calendar year during which PCTC Program cooperative vessels may catch Pacific cod?	Yes, any cooperative vessel may harvest PCTC CQ during the during the A and B seasons specified at § 679.130(a)(2).
(viii) Can any vessel catch a PCTC Program cooperative's Pacific cod?	No, only vessels that are listed on a PCTC Program cooperative's application for CQ

	may catch Pacific cod assigned to that cooperative.
(ix) Can a member of a PCTC Program cooperative transfer CQ individually without the approval of the other members of the cooperative?	No, only the designated representative of the cooperative, and not individual members, may transfer CQ to another cooperative, and only if that transfer is approved by NMFS.
(x) Are GOA sideboard limits assigned to specific persons or PCTC Program cooperatives?	Existing sideboard limits apply to individual vessels or LLP license holders, not cooperatives.
(xi) Can PCTC Program QS assigned to an LLP license or QS held by processors be assigned to more than one PCTC Program cooperative in a calendar year?	QS assigned to an LLP license may be assigned to only one cooperative in a calendar year. Multiple QS permits or LLP licenses held by a single person are not required to be assigned to the same cooperative. A processor may associate with more than one cooperative and any QS held by the processor would be divided between the associated cooperatives in the same proportion as the CQ derived from the LLP licenses.
(xii) Which members may catch the PCTC Program cooperative's CQ?	Use of a cooperative's CQ is determined by the cooperative contract signed by its members. Any violations of this contract by a cooperative member may be subject to civil claims by other members of the cooperative.
(xiii) Does a PCTC Program cooperative need a membership agreement or contract?	Yes, a cooperative must have a membership agreement or contract. A copy of this agreement or contract must be submitted to NMFS with the application for CQ. The membership agreement or contract must specify: (A) How the cooperative intends to catch its CQ; and (B) The obligations of QS holders, who are members of a cooperative, to ensure the full payment of fee liabilities that may be due.
(xiv) What happens if the PCTC Program cooperative membership agreement or contract is modified during the fishing year?	A copy of the amended membership agreement or contract must be sent to NMFS in accordance with § 679.131.
(xv) What happens if the cooperative exceeds its CQ amount?	A cooperative is not authorized to catch Pacific cod or use halibut or crab PSC limits in excess of the amount on its CQ permit. Exceeding a CQ permit is a violation of the regulations. Each member of the cooperative is jointly and severally liable for any violations of the PCTC Program regulations while fishing under the authority of a CQ permit. This liability

	extends to any persons who are hired to catch or receive Pacific cod assigned to a cooperative.
(xvi) Is there a limit on how much CQ a PCTC Program cooperative may hold or use?	No, but each QS holder is subject to ownership caps, and a vessel may be subject to vessel use caps. See § 679.133.
(xvii) Is there a limit on how much Pacific cod a vessel may catch?	Yes, generally a vessel may not catch more than 5 percent of the Pacific cod assigned to the PCTC Program for that calendar year. See § 679.133 for use cap provisions.
(xviii) Are there any special reporting requirements?	The designated representative of the cooperative may submit an annual PCTC Program cooperative report to the North Pacific Fishery Management Council.
(xix) Is there a requirement that a PCTC Program cooperative pay PCTC Program cost recovery fees?	Yes, see § 679.135 for the provisions that apply. PCTC Program cooperatives are responsible for paying cost recovery fees.
(xx) Is there any restriction on deliveries of PCTC Program CQ?	Sometimes, if the CQ AI set-aside is in effect for the fishing year as specified in § 679.132. Cooperatives must establish, through an inter-cooperative agreement, how 12 percent of the BSAI A season CQ will be set aside for delivery to an Aleutian Islands shoreplant.

(4) *Successors-in-interest.* If a member of a PCTC Program cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the CQ derived from the QS assigned to the cooperative for that year from that person remains under the control of the cooperative for the duration of that calendar year as specified in the cooperative contract. Each cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season due to the death or dissolution of a cooperative member.

§ 679.132 Aleutian Islands set-aside provisions in the PCTC Program.

(a) *Aleutian Islands set-aside provisions in the PCTC Program.*

(1) *Calculation of the Aleutian Islands Pacific cod non-CDQ ICA and DFA.* Each year, during the annual harvest specifications process set forth at § 679.20(c), the

Regional Administrator will specify the AI Pacific cod non-CDQ ICA and DFA from the AI Pacific cod non-CDQ TAC and specify the AI set-aside as follows.

(2) *Aleutian Islands Pacific cod non-CDQ ICA*. The AI Pacific cod non-CDQ ICA will be deducted from the aggregate portion of Pacific cod TAC annually allocated to the non-CDQ sectors identified in § 679.20(a)(7)(ii)(A).

(3) *Aleutian Islands Pacific cod non-CDQ DFA*. The AI Pacific cod non-CDQ DFA will be the amount of the AI Pacific cod TAC remaining after subtraction of the AI Pacific cod CDQ reserve and the AI Pacific cod non-CDQ ICA. The Regional Administrator will specify the AI set-aside in either of the following ways:

(i) The AI set-aside is 12 percent of the PCTC Program A season CQ and is in effect during the A and B seasons.

(ii) If the AI non-CDQ TAC is below 12 percent of the BSAI PCTC Program A season CQ, then the AI set-aside will be set equal to the AI non-CDQ DFA. When the AI set-aside is in effect and set equal to the AI non-CDQ DFA, directed fishing for Pacific cod in the AI may only be conducted by PCTC Program vessels that deliver their catch of AI Pacific cod to an Aleutian Islands shoreplant. After June 10, the Regional Administrator may open directed fishing for non-CDQ Pacific cod for other sectors.

(4) *Calculation of the Aleutian Islands Set-aside*. Each year, during the annual harvest specifications process set forth at § 679.20(c), the Regional Administrator will specify the AI set-aside, which will be an amount of Pacific cod equal to the lesser of either the AI Pacific cod non-CDQ DFA or 12 percent of the BSAI PCTC Program A season CQ.

(b) *Annual notification of intent to process Aleutian Islands Pacific cod* –

(1) *Submission of notification*. The provisions of this section will apply if either a representative of the City of Adak or the City of Atka submits to the Regional

Administrator a timely and complete notification of its intent to process PCTC Program Pacific cod during the upcoming fishing year.

(2) *Submission method and deadline.* The notification of intent to process PCTC Program Pacific cod for the upcoming fishing year must be submitted in writing to the Regional Administrator by a representative of the City of Adak or the City of Atka no later than October 15 of each year in order for the provisions of this section to apply during the upcoming fishing year. Notifications of intent received later than October 15 may not be accepted by the Regional Administrator.

(3) *Contents of notification.* A notification of intent to process PCTC Program Pacific cod for the upcoming fishing year must contain the following information:

- (i) Date of submission,
- (ii) Name of city,
- (iii) Statement of intent to process PCTC Program Pacific cod,
- (iv) Identification of the fishing year during which the city intends to process PCTC Program Pacific cod,
- (v) Contact information for the representative of the city, and
- (vi) Documentation of authority to represent the City of Adak or the City of Atka.

(4) *NMFS confirmation and notification.* On or before November 30, the Regional Administrator will notify the representative of the City of Adak or the City of Atka, confirming receipt of their official notification of intent to process PCTC Program Pacific cod. Then, NMFS will announce through notice in the **FEDERAL REGISTER** whether the AI set-aside will be in effect for the upcoming fishing year.

(5) *AI Set-aside Cooperative Provisions.* If the representative of the City of Adak or the City of Atka submits a timely and complete notification of intent to process in accordance of this section, then the following provisions will apply for the fishing year following the notification:

(i) The PCTC Program cooperative(s) are required to set-aside an amount of CQ calculated by the Regional Administrator pursuant to paragraph (a)(4) of this section for delivery to an Aleutian Islands shoreplant as defined at § 679.2.

(ii) All cooperatives must enter into an inter-cooperative agreement that describes how the AI set-aside will be administered by the cooperatives to ensure that the PCTC Program harvests in the BS do not exceed the amount of the set-aside for delivery to an Aleutian Islands shoreplant. This inter-cooperative agreement must establish how the cooperatives intend to harvest the AI set-aside when it applies. This inter-cooperative agreement must be provided as part of the annual cooperative application as specified in § 679.131(a)(4) and is required before NMFS can issue CQ.

(iii) The inter-cooperative agreement must establish how cooperatives would ensure that trawl catcher vessels less than 60 feet LOA assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to harvest 10 percent of the AI set-aside for delivery to an Aleutian Islands shoreplant.

(c) PCTC Program A Season Set-Aside Limitations.

(1) If the Regional Administrator has approved a notification of intent to process, vessels authorized under the PCTC Program shall not harvest the amount of the AI set-aside in the BS subarea.

(2) PCTC Program cooperatives may not deliver more than the PCTC A season CQ minus the AI set-aside established under § 679.132 to processors in the BS subarea when the AI set-aside is in effect.

(3) If an Aleutian Islands shoreplant is not able to receive deliveries of Pacific cod under the PCTC Program, then the City of Adak or the City of Atka may withdraw their annual notification of intent to process prior to the end of B season.

(4) As soon as practicable, if the Regional Administrator determines that Aleutian Islands shoreplants authorized under the PCTC Program will not process the entire AI

set-aside, the Regional Administrator may remove the delivery requirement for some or all of the projected unused AI set-aside to PCTC cooperatives in proportion to the amount of CQ that each PCTC cooperative received in the initial allocation of CQ for the remainder of the A and B season by inseason notification published in the ***FEDERAL REGISTER***.

(i) If the City of Adak or the City of Atka withdraws its intent to process, the Regional Administrator will release the unused AI set-aside to PCTC cooperatives in proportion to the amount of CQ that each PCTC cooperative received in the initial allocation of CQ for that calendar year by inseason notification published in the ***FEDERAL REGISTER***.

(ii) Following a withdrawal of an intent to process, the Regional Administrator will announce through notice in the ***FEDERAL REGISTER*** that the AI set-aside will not be in effect for the remainder of the PCTC Program fishing year.

§ 679.133 PCTC Program use caps and sideboard limits.

(a) *Ownership and use caps. (1) General.*

(i) Ownership caps limit the amount of QS that may be owned by an eligible harvester or eligible processor and their affiliates. Use caps limit the amount of CQ that may be harvested by a vessel or received and processed by a processor.

(ii) Use caps do not apply to halibut or crab PSC CQ.

(iii) Ownership and use may not be exceeded unless the entity subject to the cap is specifically allowed to exceed a cap according to the criteria established under paragraph (a)(6) of this section.

(iv) All QS ownership caps are a percentage of the initial QS pool established by NMFS in §679.130(e).

(v) The CQ processing use cap is a percentage of the total amount of CQ issued to cooperatives during a calendar year.

(vi) The vessel use cap is a percentage of the amount of CQ assigned to the PCTC Program during a calendar year.

(2) *Harvester ownership cap.* A person may not individually or collectively own more than 5 percent of the QS initially assigned to harvesters unless that person qualifies for an exemption to this ownership cap under paragraph (a)(6) of this section based on their qualifying catch history. Processor-issued QS does not count toward this ownership cap.

(3) *Vessel use cap.* A catcher vessel may not harvest an amount of CQ greater than 5 percent of the CQ issued to the PCTC Program during a calendar year unless that vessel qualifies for an exemption to this use cap under paragraph (a)(6) of this section based on their qualifying catch history.

(4) *Processor ownership cap.* A person may not individually or collectively own more than 20 percent of the QS initially assigned to processors unless that person qualifies for an exemption to this ownership cap under paragraph (a)(6) of this section based on their qualifying processing history.

(5) *Processing use cap.* A processor, at the firm or company level, may not process more than 20 percent of the CQ assigned to the PCTC Program during a calendar year unless that processor qualifies for an exemption to this use cap under paragraph (a)(6) of this section based on their qualifying processing history. The amount of CQ that is received by a PCTC Program processor is calculated based on the sum of all landings made with CQ received or processed by that processor and the CQ received or processed by any person affiliated with that processor as that term is defined in § 679.2.

(6) *Ownership exemptions.*

(i) *Harvester ownership cap exemption.* A person may receive an initial allocation of Pacific cod QS in excess of the harvester ownership cap. This exemption is non-transferrable.

(ii) *Processor ownership cap exemption.* A person may receive an initial allocation of Pacific cod QS in excess of the processor ownership cap. This exemption is non-transferrable.

(iii) *Vessel use cap exemption.* A vessel designated on an LLP that received an initial allocation of Pacific cod QS in excess of the harvester ownership cap may harvest CQ in excess of the vessel use cap up to an amount of CQ proportional to the amount of CQ resulting from QS assigned to the LLP. This exemption is non-transferrable.

(iv) *Processor use cap exemption.* A processor that received an initial allocation of Pacific cod QS in excess of the processor ownership cap may process more than 20 percent of PCTC Program CQ during a calendar year up to an amount of CQ proportional to the ratio of QS held by the processor over the total amount of QS held by processors. This exemption is non-transferrable.

(7) *Transfer limitations.* An eligible harvester that receives an initial allocation of Pacific cod QS that exceeds the ownership cap listed in paragraph (a)(2) of this section shall not receive any Pacific cod QS by transfer unless and until the eligible harvester's holdings of Pacific cod QS in the PCTC Program are reduced to an amount below the use cap specified in paragraph (a) of this section.

(b) *Sideboard limits - General.* The regulations in this section restrict the holders of LLP licenses issued PCTC Program QS from using the increased flexibility provided by the PCTC Program to expand their level of participation in GOA groundfish fisheries.

(1) *Sideboard limit restrictions for LLP licenses authorizing AFA non-exempt catcher vessels.* LLP licenses that authorize AFA non-exempt catcher vessels will be subject to the sideboard limitations specified at § 679.64(b)(4)(i).

(2) *At-Sea Processing Sideboard Limit.* A sideboard limit will be specified on each LLP license with a BSAI Pacific cod trawl mothership endorsement. Each LLP license with a BSAI Pacific cod trawl mothership endorsement may receive PCTC

Program CQ deliveries from a catcher vessel not to exceed 125 percent of a catcher/processor's processing history as defined in § 679.130 or 125 percent of the catch history from LLP licenses that are owned (in excess of 75 percent) directly or indirectly by the owner of a catcher/processor eligible for the PCTC Program, up to 125 percent of their processing history.

§ 679.134 PCTC Program permits, catch monitoring, catch accounting, and recordkeeping and reporting.

(a) *Permits.* For permit information, please see § 679.4(q).

(b) *Catch monitoring requirements for PCTC Program catcher vessels.* The owner or operator of a catcher vessel must ensure the vessel complies with the observer coverage requirements described in § 679.51(a)(2) at all times the vessel is participating in a cooperative.

(c) *Catch monitoring requirements for motherships receiving unsorted codends from a PCTC Program catcher vessel.* (1) *Catch weighing.* All catch, except halibut sorted on deck by vessels participating in the halibut deck sorting described at § 679.120, must be weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by an observer.

(2) *Additional catch monitoring requirements.* Comply with catch monitoring requirements specified at § 679.93(c).

(d) *Catch monitoring requirements for shoreside processors.* All groundfish landed by catcher vessels described in § 679.51(a)(2) must be sorted, weighed on a scale approved by the State of Alaska as described in § 679.28(c), and be made available for sampling by an observer, NMFS staff, or any individual authorized by NMFS. Any of these persons must be allowed to test any scale used to weigh groundfish to determine its accuracy.

(e) *Catch accounting.* (1) *Pacific cod.* All Pacific cod harvests by a vessel that is named on an LLP license assigned to a PCTC Program cooperative and fishing under a CQ permit will be debited against the CQ for that cooperative during the PCTC Program fishing seasons as defined in § 679.130(a)(2).

(2) *PCTC Program halibut and crab PSC.* All halibut and crab PSC in the PCTC Program used by a vessel that is named on an LLP license assigned to a cooperative and fishing under a CQ permit will be debited against the CQ for that cooperative during the PCTC Program fishing seasons as defined in § 679.130(a)(2).

(3) *Groundfish sideboard limits.* All groundfish harvests in the BSAI and GOA that are subject to a sideboard limit for that groundfish species as described under § 679.133(c), except groundfish harvested by a vessel when participating in the Central GOA Rockfish Program, will be debited against the applicable sideboard limit.

(f) *Recordkeeping and reporting.* The owners and operators of catcher vessels and processors authorized as participants in the PCTC Program must comply with the applicable recordkeeping and reporting requirements of this section and must assign all catch to a PCTC Program cooperative as applicable at the time of catch or receipt of Pacific cod. All owners of catcher vessels and processors authorized as participants in the PCTC Program must ensure that their designated representatives or employees comply with all applicable recordkeeping and reporting requirements.

(1) *Logbook.*

(i) *DFL.* Operators of catcher vessels participating in the PCTC Program fishery must maintain a daily fishing logbook for trawl gear as described in § 679.5.

(ii) *ELB.* Operators of a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement must use a combination of NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report

groundfish and PSC information as described in § 679.5 to record PCTC Program landings and production.

(2) *eLandings*. Managers of shoreside processors that receive Pacific cod in the PCTC Program must use eLandings or NMFS-approved software as described in § 679.5(e) to record PCTC Program landings and production.

(3) *Production reports*. Operators of a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement that receives and purchases landings of PCTC CQ must submit a production report as described in § 679.5(e)(10).

(4) *Product transfer report (PTR), processors*. Operators of a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement and managers of shoreside processors that receive and purchase landings of PCTC Program CQ must submit a PTR as described in § 679.5(g).

(5) *Vessel monitoring system (VMS) requirements*. Operators of catcher vessels assigned to a PCTC cooperative or that are subject to sideboard limits detailed in § 679.134 must use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska during the A and B season.

(6) *PCTC Program cost recovery fee submission* (See § 679.135).

(7) *Pacific cod Ex-vessel Volume and Value Report*. A processor that receives and purchases landings of PCTC CQ must submit annually to NMFS a complete Pacific cod Ex-vessel Volume and Value Report, as described in § 679.5(u) for each reporting period for which the PCTC processor receives PCTC CQ.

§ 679.135 PCTC Program cost recovery.

(a) *Cost recovery fees*.

(1) *Responsibility*. Each PCTC Program cooperative must comply with the requirements of this section.

(i) Subsequent transfer of CQ or QS held by PCTC cooperative members does not affect the cooperative's liability for noncompliance with this section.

(ii) Non-renewal of a CQ permit does not affect the cooperative's liability for noncompliance with this section.

(iii) Changes in the membership in a PCTC cooperative, such as members joining or departing during the relevant year, or changes in the amount of QS holdings of those members does not affect the cooperative's liability for noncompliance with this section.

(2) *Fee collection.* PCTC Program cooperatives that receive CQ are responsible for submitting the cost recovery payment for all CQ landings made under the authority of their CQ permit.

(3) *Payment.*

(i) *Payment due date.* A cooperative representative must submit any cost recovery fee liability payment(s) no later than August 31 following the calendar year in which the CQ landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the NMFS Alaska Region website as defined at § 679.2.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars using an approved payment method available on the payment website.

(b) *Pacific cod standard ex-vessel value determination and use.* NMFS will use the standard prices calculated for Pacific cod based on information provided in the Pacific Cod Ex-vessel Volume and Value Report described at § 679.5(u)(1) from the previous calendar year.

(c) *PCTC Program fee percentage.*

(1) *Established percentage.* The fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount

will be announced by publication in the *FEDERAL REGISTER*. This amount must not exceed 3.0 percent of the gross ex-vessel value pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors.* NMFS must use the following factors to determine the fee percentage:

(A) The catch to which the PCTC Program cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the PCTC Program.

(ii) *Methodology.* NMFS must use the following equations to determine the fee percentage:

$$100 \times \text{DPC}/\text{V}$$

where:

DPC = the direct program costs for the PCTC Program for the previous calendar year with any adjustments to the account from payments received in the previous year.

V = total of the standard ex-vessel value of the catch subject to the PCTC cost recovery fee liability for the current year.

(3) *Publication.*

(i) *General.* Following the fishing season in which the PCTC CQ landings were made, NMFS shall calculate the fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* The calculated fee percentage is applied to PCTC CQ landings made in the previous calendar year.

(4) *Applicable percentage.* The CQ permit holder must use the fee percentage applicable at the time a PCTC landing is debited from a CQ allocation to calculate the cost recovery fee liability for any retroactive payments for CQ landed.

(5) Fee liability determination for a cooperative.

(i) All cooperatives are subject to a fee liability for any CQ debited from a CQ allocation during a calendar year.

(ii) The Pacific cod fee liability assessed to a cooperative is based on the proportion of the standard ex-vessel value of Pacific cod debited from a CQ holder relative to all cooperatives during a calendar year as determined by NMFS.

(iii) NMFS will provide a fee liability summary letter to all cooperative representatives by no later than August 1 of each year. The summary will explain the fee liability determination including the current fee percentage, details of CQ pounds debited from CQ allocations by permit, species, date, and prices.

(d) Underpayment of fee liability.

(1) Pursuant to § 679.131, no cooperative will receive any CQ unless that cooperative has made full payment of cost recovery liability at the time it applies for CQ.

(2) If a cooperative representative fails to submit full payment for PCTC Program cost recovery fee liability by the date described in paragraph (a)(3) of this section:

(i) At any time thereafter the Regional Administrator may send an IAD to the cooperative stating the amount of the cooperative's estimated fee liability that is past due and requesting payment. If payment is not received by the 30th day after the date on the IAD, the agency may pursue collection of the unpaid fees.

(ii) The Regional Administrator may disapprove any application to transfer CQ to or from the cooperative in accordance with § 679.130.

(iii) No CQ permit will be issued to that cooperative for that following calendar year and the Regional Administrator may continue to prohibit issuance of a CQ permit for any subsequent calendar years until NMFS receives the unpaid fees.

(iv) No CQ will be issued based on the QS held by the members of that cooperative to any other CQ permit for that following calendar year.

(e) *Over payment.* Payment submitted to NMFS in excess of the annual PCTC Program cost recovery fee liability for a cooperative will be credited against the CQ permit holder's future cost recovery fee liability unless the CQ permit holder requests the agency refund the over payment. Payment processing fees may be deducted from any fees returned to the CQ permit holder.

(f) *Appeals.* A cooperative who receives an IAD for incomplete payment of a fee liability may appeal the IAD pursuant to 15 CFR part 906.

(g) *Annual report.* Each year, NMFS will publish a report describing the PCTC Program cost recovery fee program.

12. Revise Table 40 to Part 679— BSAI Halibut PSC Sideboard Limits for AFA Catcher/Processors and AFA Catcher Vessels, to read as follows:

Table 40 to Part 679 - BSAI Halibut PSC Sideboard Limits for AFA Catcher/Processors and AFA Catcher Vessels

In the following target species categories as defined in § 679.21(b)(1)(iii) and (e)(3)(iv) . . .	The AFA catcher/processor halibut PSC sideboard limit in metric tons is . . .	The AFA catcher vessel halibut PSC sideboard limit in metric tons is...
All target species categories	286	N/A
Pacific cod trawl	N/A	N/A
Pacific cod hook-and-line or pot	N/A	2
Yellowfin sole	N/A	101
Rock sole/flathead sole/“other flatfish” ¹	N/A	228
Turbot/Arrowtooth/Sablefish	N/A	0
Rockfish ²	N/A	2
Pollock/Atka mackerel/“other species”	N/A	5

13. Revise Table 56 to Part 679—GOA Species and Species Groups for Which Directed Fishing for Sideboard Limits by Non-Exempt AFA Catcher Vessels is Prohibited, to read as follows:

Table 56 to Part 679—GOA Species and Species Groups for Which Directed Fishing for Sideboard Limits by Non-Exempt AFA Catcher Vessels is Prohibited

Species or species group	Management or regulatory area and processing component (if applicable)
Pollock	Southeast Outside District, Eastern GOA
Pacific cod	Eastern GOA, inshore component
	Eastern GOA, offshore component
Sablefish	Western GOA
	Central GOA
	Eastern GOA
Shallow-water flatfish	Western GOA
	Eastern GOA
Deep-water flatfish	Western GOA
	Central GOA
	Eastern GOA
Rex sole	Western GOA
	Eastern GOA
Arrowtooth flounder	Western GOA
	Eastern GOA
Flathead sole	Western GOA
	Eastern GOA
Pacific ocean perch	Western GOA
	Eastern GOA

Northern rockfish	Western GOA
Shortraker rockfish	Western GOA
	Central GOA
	Eastern GOA
Dusky rockfish	Western GOA
	Central GOA
	Eastern GOA
Rougheye rockfish	Western GOA
	Central GOA
	Eastern GOA
Demersal shelf rockfish	Southeast Outside District
Thornyhead rockfish	Western GOA
	Central GOA
	Eastern GOA
Other rockfish	Central GOA
	Eastern GOA
Atka mackerel	GOA
Big skates	Western GOA
	Central GOA
	Eastern GOA
Longnose skates	Western GOA
	Central GOA
	Eastern GOA
Other skates	GOA
Sculpins	GOA
Sharks	GOA
Octopuses	GOA

